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Case Law Update

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This Update contains summaries of all relevant Appellate decisions for the preceding week, with comments on how a particular decision affects you. In addition, we review daily the Merit Orders posted on the DOAH website. This Update contains summaries and links to relevant JCC decisions for the past week.

Please feel free to contact Rogers Turner (rturner@hrmcw.com) or Matthew Troy (mtroy@hrmcw.com) with questions or comments on any of the listed cases.

*District Court of Appeal Cases***

Hernando County Sherriff/NARS v. Sikalos, **(Fla. 1st DCA 6/25/14)**
Grice Offset

The E/C appealed the JCC's denial of their asserted offset of TTD benefits. Following claimant's 2011 WC injury, he received TTD benefits of $567.54. The claimant also received SSD benefits and in line of duty disability benefits under the Florida Retirement System (FRS). The total weekly benefits the claimant received ($1,497.96) exceeded his AWW ($851.27) by $646.69. The E/C asserted that under Grice (claimant can't receive benefits from employer and collateral sources which exceed 100% of the AWW) that they were entitled to an offset. After offsetting the entire amount of benefits, they asserted they owed only the weekly $20 minimum found in F.S. 440.12(2). The JCC excluded the amount of weekly in line disability ($588.56) from the offset per Lombardi, as claimant began contributing 3% of that premium as of 7/7/11. The DCA affirmed the JCC's ruling per Lombardi, which holds that any benefit (here in line of duty FRS payments) even partially funded by the claimant's payment of premium is not includable in offset calculation. Lombardi reasoned that such a deduction would violate F.S.§440.21, which prohibits making employees fund any portion of medical or indemnity payments. The DCA rejected the E/C's argument that F.S.§440.21 did not apply because the claimant's FRS account was maintained by the county, and not the state. The DCA indicated that agreeing with the E/C position would create disparate results for claimants of state versus claimants of non-state entities participating in the FRS. This case appears to effectively eliminate the Grice offset for any case where the claimant/employee partially contributed to FRS or the employer's pension plan after 7/7/11. **Click here to view Opinion**

Westphal Oral Argument

On June 9th, the Supreme Court heard oral argument in Westphal v. City of St. Petersburg. The argument centered on the claimant's unresolved medical condition following payment of 104 weeks of temporary total disability benefits. The claimant ultimately obtained PTD benefits, but he appealed, asking the court to deem the 104 week cap on temporary benefits unconstitutional. Neither side adequately explained the concept of impairment income benefits to the court, which repeatedly sought an answer as to how much the claimant received in terms of dollars for IB benefits. The claimant argued that the reduction in weeks of temporary benefits from the 1968 statute (360 weeks) to the current amount (104 weeks) was sufficient under Kluger to render the entirety of Chapter 440 unconstitutional. The Florida Attorney General's office argued that Kluger requires a complete removal of a cause of action, and the reduction is not so complete as to justify striking the current statute. It is unknown when or whether the Court will issue a written opinion.

Holl v. UPS/Liberty Mutual (6/9/2014)
TTD Benefits/401 week limit under 2002 version of statute

The claimant appealed the JCC's finding that the 401 week limit found in 440.15(3)(c) applied to receipt of temporary benefits. The majority affirmed the JCC's ruling, noting that the analysis is whether temporary benefits are appropriately included in the subsection of the statute titled "Permanent Impairment and Wage-Loss Benefits". The statute specifically includes temporary benefits as being includable in the 401 week cap. The majority reviewed the changes to the statute in 2003, as well as the fact that a maximum impairment rating of 99% times 3 weeks per each percent available under that statute, plus 104 weeks, equals 401 weeks. The dissent noted that reviewing the statute as a whole required reversal, as this section applies to permanent rather than temporary benefits, and that the administrative code "seemingly" applies the 401 week limits only to supplemental benefits. This holding should have limited applicability. **Click here to view Opinion**

Stanley Steemer International/Broadspire v. Smith (Fla. 1st DCA 6/9/14)
Attendant Care/Misrepresentation

The DCA affirmed the JCC's denial of misrepresentation and award of attendant care without comment. As jurisdiction was reserved as to fees and costs, those issues were dismissed. **Click here to view Opinion**

Trejo-Perez v. Arry's Roofing/Builders Ins. Group **(Fla. 1st DCA 6/3/14)**
Powers of JCC to reject medical testimony

The First DCA affirmed the JCC's denial of the claimant's claim for referral to a Spanish-speaking psychologist. The JCC stated that although medical testimony suggested a Spanish-speaking psychologist to be "preferable", no testimony indicated it was medically necessary. The claimant argued that the JCC erred in rejecting unrebutted medical testimony. The opinion notes that a JCC may reject unrebutted medical testimony if there is a reasonable evidentiary basis for doing so. The First DCA noted further that the Claimant's own testimony did serve as a reasonable basis for the JCC to deny the claim. A concurring opinion noted that despite this ruling there may be certain contexts in which a linguistically-compatible psychiatrist would be medically necessary. The dissent however stated that the JCC did not base the ruling on any conflicting evidence and simply disagreed with the doctor. The dissent further agreed the opinion sets a standard that will result in lower quality care for Spanish-speaking employees. This case does not hold that Spanish speaking medical providers can't be medically necessary. The majority held, rather, that in this particular case the JCC could reject the doctor's opinion where it failed to provide evidentiary support. **Click here to view Opinion**

Caceres v. Sedano's Supermarkets & Johns Eastern Co. Inc. **(Fla. 1st DCA 6/3/14)**
Repetitive Trauma

The First DCA reversed the JCC's denial of compensability under a theory of repetitive trauma. The opinion states that the JCC erred in concluding that the claim was barred due to the claimant's late reporting of the injury. The First DCA noted that in a repetitive trauma case there are two dates from which a report of injury can be timely filed, 30 days from either; the date of initial manifestation or generally the last date of exposure to the trauma. Since the JCC only considered the date of initial manifestation, the First DCA remanded the case for consideration of the possible alternate date. **Click here to view Opinion**

Please note that the DCA Opinions and Merit Orders contained in this newsletter are non-final until 30 days after their rendition. Until that time, they are subject to amendment, vacation, or other action which may remove or alter some or all of the decision. Please contact any HRMCWW attorney if you have a question as to the finality and applicability of an Opinion or Order. We endeavor to include any amendments or alterations to Opinions or Orders that may occur at a later date.

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