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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.

Hurley Rogner is finalizing our 5 hour Law and Ethics Update course. Please contact Nancy Curry (ncurry@hrmcw.com) for further information regarding scheduling.

*First District Court of Appeal Cases***

*** No new DCA decisions since March 14 newsletter ***

Johns Eastern Co./Indian River County BCC v. Bellamy
Firefighter Presumption/Burden of Proof

(Fla.1st DCA 3/12/2014)

The DCA affirmed the JCC's finding that the claimant satisfied the prerequisites for occupational presumption afforded firefighters. However, they reversed and remanded for the JCC to clarify the specific standard to determine whether or not the E/C successfully rebutted the occupational causation presumption. The court noted the similarity with Punsky, which identifies the two circumstances/levels of proof to rebut the presumption. Where a claimant relies solely on the statutory presumption, the E/C can rebut with "competent evidence". When the JCC accepts credible evidence supporting the presumption, the JCC must then find "clear and convincing" evidence to rebut the presumption. In this case, the JCC cited no independent medical evidence supporting the presumption, so the E/C's burden was competent evidence. However, the JCC referenced both burdens, without specifying either as to the burden required in finding the presumption was not met. [Click here to view Opinion](#)

Flagler Hospital Inc. v. Association Ins.Co./DFS, Div. of Workers' Compensation

(Fla.1st DCA 3/12/2014)

Claims for Reimbursement of Medical Bills/Jurisdiction of DFS

The DCA affirmed DFS's determination that they lacked subject matter jurisdiction over a reimbursement dispute. Prior case law indicates that jurisdiction does not vest with the Department until compensability has been established. The court also declined to rule on the constitutional/access to courts issues asserted as there was no evidence that no other avenue of redress existed. [Click here to view Opinion](#)

White v. State of FL DOC/Holmes Correctional

(Fla.1st DCA 3/4/2014)

Income Impairment Benefits/Pay and Investigate Provision

The JCC denied compensability of the claim, and payment of IBs. The DCA wrote to discuss the IB issue. The E/C accepted the claim under the 120 day pay and investigate provision. That provision provides that a carrier must pay "all benefits" during the pendency of the investigation. Prior to timely denying compensability, the claimant obtained a 10% impairment rating from the treating doctor. However, on the same document where the doctor assigned the rating, he indicated the claimant was not at overall MMI. The DCA noted that IBs are due after MMI. The DCA noted there was no stipulation as to overall MMI, and even if there were, such a stipulation would have been required to conform to the evidence. As the claimant failed to provide evidence of overall MMI, the DCA declined to rule on claimant's argument that claimant was "entitled" to be paid the rating regardless of the ultimate denial of compensability. [Click here to view Opinion](#)

Luces v. Red Ventures/The Hartford

(Fla.1st DCA 2/28/2014)

Attorney Fees and Costs/Powers of JCC

The JCC would not approve the claimant's Motion for a \$1500 "medical only" fee under F.S. s.440.34(3)(a), finding no evidence that the claimant attorney procured "only" (or perhaps any) medical benefit. The JCC asked for additional argument from the parties, but the claimant attorney merely filed a Motion for Rehearing which lacked any legal or factual basis to support an award of a medical only fee. The DCA affirmed this ruling by the JCC. However, the DCA reversed the JCC's Order that the \$1500 go directly to the claimant, as JCCs do not have the power to reform agreements on their own motion or craft remedies outside of the workers' compensation law. The claimant attorney may attempt to prove entitlement to an E/C paid fee under F.S. s. 440.34(3)(b) on remand. The DCA noted that the JCC also lacked jurisdiction to rule upon a \$500 payment of out of pocket

costs to the claimant directly, as it did not involve attorney fees or taxable costs. [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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