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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***

AMS Staff Leasing v. Ocha Engineering Group **Jurisdiction/Waiver of Arbitration**

(Fla. 3d DCA 5/28/2014)

AMS provided workers to Ocha for a construction job, one of whom was injured. That employee filed PFBs against both entities. Ocha sought indemnification under its contract from AMS. AMS argued the JCC did not have jurisdiction over the indemnity issue arising out of their contract, which the JCC properly agreed with. Ocha then sought damages in Circuit Court. The Circuit Court denied AMS' motion to compel arbitration in Dallas, Texas under the contract. The DCA reversed the trial judge's denial of the motion to compel arbitration. Generally, a party seeking to compel arbitration may waive that right by taking inconsistent actions (such as pursuing litigation of the action). However, case law also holds that filing a motion to dismiss generally does not rise to that level. In this case, the DCA found that AMS did exactly what it had to do in alleging the JCC did not have jurisdiction over the contractual arbitration claim, noting that the JCC could not have ruled on the issue even if she wanted to. As AMS' actions did not amount to waiver, the DCA reversed the circuit court's order denying arbitration. [Click here to view Opinion](#)

Santizo-Perez/Estate of Pivaral/Ramirez v. Genaro's Corp.
Death Claims/Compensability

(Fla.1st DCA 5/19/14)

The First DCA reversed the JCC's denial of compensability of a death claim. The decedent managed a supermarket. His job included rounding up carts in the parking lot at the end of the day. While engaged in this activity one night, a motorist ran over the decedent. The motorist confessed he did this intentionally, believing (although no evidence was presented to confirm it) that the decedent sexually harassed his girlfriend, who worked as a cashier at the market. The murderer confessed to planning the attack for several weeks, based upon his knowledge of the manager's nightly forays into the parking lot to retrieve carts. The DCA rejected the JCC's stated basis for denying compensability, which included (1) that the assault had nothing to do with work, (2) that the car was not an "implement of employment, (3) that the decedent and attacker did not know each other, and (4) that the location of the assault was merely fortuitous, and could have happened anywhere. The DCA noted that case law addressing "arising out of" (the employer conceded he was in the course and scope at the time of the incident) supported a finding that the work performed (collecting carts at night) was a risk "incident to the hazards of industry". The DCA also based compensability on the fact that the (misguided) reason for the attack arose out of the work related connection of the decedent store manager to the attacker's cashier girlfriend. [Click here to view Opinion](#)

Roig v. Mosquera D.M.D.

(Fla. 3d DCA 5/9/2014)

Rule Nisi/Jurisdiction and Disputed Facts

The DCA reversed the circuit court judge's dismissal of a Rule Nisi. A 2007 JCC Order instructed the employer to provide orthopedic care to the claimant in Palm Beach. A 2009 JCC Order found that the employer failed to comply with the 2007 order, and instructed the claimant to obtain enforcement of the Order. The First DCA affirmed that Order. The claimant then filed the instant Rule Nisi, and after numerous proceedings, the circuit judge ultimately dismissed the Petition for Rule Nisi, finding she lacked jurisdiction based upon factual disputes as to whether the employer had complied with the 2007 Order. The Third DCA ruled this was error, based upon the language of F.S.§440.24(1)(2008), prior case law, and because the issue of whether the employer had failed to comply with the 2007 order had already been ruled upon. The DCA noted that if the employer seeks to limit the orthopedic care provided to the injury caused by the work accident only, they need to file a Petition to Modify. [Click here to view Opinion](#)

Misrepresentation/Actions Triggering Defense

The state filed one count of fraud against the claimant for violating F.S.s.440.105. The defendant argued the charge should be dismissed because (1) the employer knowingly hired the illegal claimant and was not defrauded or misled, and (2) claimant had not filed a WC claim or asked for benefits. The trial court dismissed the charge, reasoning that the statute appeared to deal with insurance and insurance coverage issues and that subparagraph (b)(9) required the obtaining of employment or filing a claim to be connected to trying to obtain WC benefits. The lower court further ruled that to obtain a conviction under 440.105, the State is required to plead and prove not only that the claimant used false identity to obtain employment, but that he did so to obtain WC benefits.

The DCA reversed the trial judge. They examined the operative language [to] “*present . . . any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits. . . .*”, concluding the legislature intended “or” to mean the statute could be violated by either action described. A review of the law’s legislative history supported their analysis. Both parties argued Matrix Employee Leasing v. Hernandez supported their position. The court noted Matrix dealt only with a denial of benefits under F.S. 440.09(4), and that if it has any application to the present case, it shows that a violation under 440.105(4)(b)9 should be considered distinctly separate from whether the violation was done for the purpose of obtaining benefits.

Clearly, presenting a false SSN is a prima facie violation of 440.105. The E/C still has to prove, however, that the claimant did so for the purpose of obtaining workers compensation benefits to deny benefits under 440.09(4). If the claimant were then to be convicted of violating 440.105, the E/C could consider invoking 440.09(4)(b) (*A judge of compensation claims, administrative law judge, or court of this state shall take judicial notice of a finding of insurance fraud by a court of competent jurisdiction and terminate or otherwise disallow benefits*) to terminate benefits. It is also possible this case might require a carrier’s SIU department to refer every false SSN case for potential prosecution.

[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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