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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

Coleman v. American Airlines/Sedgwick Claims, **(Fla. 1st DCA 4/22/2015)**
Prevailing Party Costs

The JCC entered an order awarding the E/C $2,645.70 in taxable costs. The claimant appealed a portion of the award, asserting some of the awarded costs were unreasonable or not properly taxable. The DCA agreed that the condensed versions of deposition transcripts (in addition to originals and one copy per deposition) were not a cost "reasonably necessary to defend the claims" and deducted $150 from the costs awarded. They modified and affirmed as to all other awarded costs. **Click here to view Opinion**

Urguelles v. Oasis Café/Technology Ins. Co., **(Fla. 1st DCA 4/15/15)**
Attorney Fees/Fees applicable to statutory formula

The DCA reversed the JCC's Order limiting attorney fees. The JCC indicated that he reduced the stipulated fee amount under the 20/15/10 formula based on his interpretation that the first $10,000 in benefits secured, to which the percentages of twenty and fifteen percent would apply, had been "exhausted" with the approval of another attorney's fee on a lump-sum settlement (which were collected by another attorney altogether). The JCC did not, however, have the benefit of the recent Cortes-Martinez v. Palmetto Vegetable Co. case (3/10/15) where the DCA held that each separate and distinct attorney's fee is subject to the 20/15/10 formula. **Click here to view Opinion**

Cuenca v. Nova Southeastern Univ./York Risk **(Fla. 1st DCA 4/9/14)**
Attorney Fees/Medical Only Fees

The DCA reversed the JCC's decision not to enter an order approving a $1500 medical only fee and costs. The claimant originally filed a PFB on 12/5/13 against Nova and PMA. Counsel for the E/SA filed a Notice of Appearance 12 days later noting York was the proper S/A, and 13 days thereafter filed a "Notice of Change of Servicing Agent" noting York assumed responsibility of the claim as of 12/1/13. The E/SA never sought to dismiss this PFB. A second PFB filed on 2/14/14 named York and PMA as carrier and sought the same benefits. The E/SA attended mediation on 5/1/14, agreed to settle the claim for a lump sum including a statutory fee and costs, and the E/SA agreed to pay an additional $1500 medical only fee and $275 in costs. The JCC approved the fee on the settlement, but denied the side fee and costs, noting his review of the DOAH docket and the stipulation showed "presumably" that the failure to respond to the first PFB was because of the wrong SA being listed, and that the second response was timely. He indicated the parties could seek modification or rehearing, which the claimant attorney did, listing specifics to support entitlement to the medical only fee. That too was denied. The DCA reversed, finding the record did not support the JCC's presumptions and entitlement to the fee and costs existed. Additionally, they noted the JCC should have taken judicial notice of the records on the docket and provided advance notice of those documents outside of the records provided with the stipulation. **Click here to view Opinion**

Box v. Tallahassee Fire Dept./City of Tallahassee, **(Fla. 1st DCA 3/31/2015)**
Motions for Summary Final Order/Standard and Burden of Proof

The DCA reversed the JCC's entry of a Summary Final Order in favor of the E/C. After the claimant filed a PFB for payment of income impairment benefits at the correct rate, the E/C filed a Motion for Summary Final Order, alleging the IBs had been paid at the correct rate. Rule of Procedure 60Q-6.120(2) requires a finding that there is no material issue of fact, and that the moving party is entitled to judgment as a matter of law. The moving party has the burden to show there is no material issue of fact. The DCA noted that F.S. s. 44015(3)(c) provides two "correct rates" at which IBs may be paid with the distinguishing factor being whether the claimant is earning 100% of the pre-injury AWW. Here, the record did not reveal any evidence of the amount the E/C used to calculate the payment of the claimant's IBs, which required reversal of the Summary Final Order. **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.