



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

Vasquez v. Romero, et al.

(Fla. 1st DCA 8/19/15)

Jurisdiction of JCC over discovery after withdrawal of PFB

The DCA granted the injured worker's Writ of Prohibition, which challenged the JCC's jurisdiction to rule on discovery matters. The injured worker initially filed, but then withdrew without prejudice his PFB. He then filed suit in civil court against Romero and other entities. Romero and his carrier then sought discovery in the form of medical records from a non party doctor, and discovery related to their claim for contribution from another alleged employer. Romero argued the JCC had jurisdiction because the dismissal of the PFB was without prejudice and could be re-filed, or because of their contribution claim under F.S. s. 440.42(4). The DCA granted the writ, finding that jurisdiction of the JCC is removed by the dismissal of a PFB, and that the JCC's jurisdiction under the contribution statute is only conferred once responsibility of a carrier has been established.

The opinion appears to conflict with Chapter 440 and DOAH rules governing discovery, and does not mention HRMCW's 2013 Covell v. Cracker Barrel case, which states "We conclude that a JCC has jurisdiction to compel the production of documentary evidence, even before the filing of a PFB. See Canovas v. Sugar Supply, Inc., 921 So. 2d 26 (Fla. 1st DCA 2006)." The opinion would have provided clearer guidance if it perhaps limited the holding to cases where no benefits were being provided or sought. [Click here to view Opinion](#)

Vancamp v. Decision HR 30/FWCGIA/USIS,
Temporary Benefits

(Fla. 1st DCA 8/19/15)

The DCA affirmed the JCC's denial of additional temporary benefits under Westphal, and noted the claimant failed on appeal to prove that the 104 week limit on temporary benefits was unconstitutional, either facially or as applied. [Click here to view Opinion](#)

Perry v. City of St. Petersburg,
Medical Testimony/Daubert

(Fla. 1st DCA 8/7/2015)

The claimant appealed the JCC's denial of medical care on multiple grounds, all but one of which was affirmed by the DCA. However, the DCA reversed the JCC's finding that he was not required to analyze the treating neurosurgeon's opinions under F.S. s. 90.702 (Daubert), effective 7/1/13. The DCA acknowledged the JCC did not have the benefit of the recent Giamo case (*requiring application of F.S. s 90.702 to the treating neurosurgeon's apportionment opinions*). The DCA remanded for the JCC to apply the factors outlined in the recent Booker case to assist the JCC's Daubert analysis. [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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