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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) with questions or comments on any of the listed cases.

HRMCW Cases

United States Fires Ins. Co./Oxford Shops of S. FL v. Hackett, (Fla.1st DCA 12/14/2018)
Petitions to Modify/Compelling IME
Bill Rogner

The claimant's injury occurred in 1985. Per a 1999 Final Order she received 24 hour a day attendant care from her husband and *daughter in law*, whom the E/C each paid over $31,000 a year. The claimant stopped seeing her doctor in 2012, but continued signing off on the timesheets. Thereafter, the E/C obtained surveillance which clearly showed the daughter in law was not providing the care attested to on time sheets. The E/C sought to file a Petition to Modify, alleging a change in the claimant's underlying condition. They also sought to compel the claimant to attend an IME, so they could obtain admissible medical testimony to support their Petition. After an evidentiary hearing, the JCC found the evidence clearly showed deceit by the claimant and her family, but denied the E/C's Petition, due to a lack of medical evidence. The DCA reversed the JCC's ruling that the E/C cannot file a Petition to Modify for medical benefits only, and they reversed her ruling that she could not compel the claimant to attend an IME. Although a PFB is generally seen as the "dispute" which triggers the ability of the E/C to compel a claimant to attend an IME, the DCA found a Petition to Modify clearly encompasses the formal dispute requirement, and that to deny the E/C the right to obtain requisite medical evidence to sustain their burden of proof to show a change in the claimant's underlying medical condition runs afoul of the statute's intent to decide issues quickly on their merits. **Click here to view Opinion** ***(erroneously identified in the DCA opinion as the daughter)***

JCC Dietz (Sebastian)(Derrick Cox) – Denied compensability of presumption claim and attendant indemnity and medical. Claimant was a 27 year old officer with a clean pre-employment physical. IMEs (Kakar for the E/C and Mathias for the claimant) disagreed as to the cause of the claimant's symptoms. The EMA (Perloff) opined that in the absence of other causes, the claimant's infarction was caused by a combined overdose of dietary/workout supplements. **Click here to view Order**

JCC Hedler (West Palm Beach)(Paul Terlizzese) – Denied Entitlement to Attorney Fees arising out of four separate PFBs. Two PFBs sought indemnity. The JCC denied the claimant's arguments that if no response was forthcoming and the benefit was not received within 30 days, then entitlement attached. The JCC noted the operative issue was when payment was issued, which was within 30 days. In a PFB seeking payment of a medical bill, the JCC found that although the E/C did not file a response to the PFB, the medical benefit was authorized, and the PFB requested payment to the claimant. The JCC found he had no jurisdiction as to this bill. Finally, the JCC denied entitlement arising out of a PFB for left knee replacement surgery, finding that any delays in authorizing the surgery were due to the claimant, whom the initial medical note stated was to "follow up as needed". Once the surgery was actually requested, it was timely authorized. **Click here to view Order**

DCA Cases

Crown Diversified Industries Corp/Liberty Mutual v. Prendiville, (Fla. 1st DCA 12/10/2018)
Exposure/Competent Expert Evidence

The DCA reversed the JCC's finding that the claimant's alleged workplace exposure to mold was compensable, finding claimant's IME's medical testimony did not provide competent evidence. The claimant worked for a hotel and timeshare that had a mold problem which was inspected and confirmed by an environmental company hired by the hotel operator. The claimant was diagnosed with dysphonia, gastroesophageal reflux disease, allergic rhinitis, and lymphedema which her doctor attributed to the exposure at work. The E/C's doctor opined that the injury was personal in nature and not related to the work place exposure and argued the claimant could not prove by clear and convincing evidence the exposure caused the injury. The claimant's IME (Dr. Powers) was a family practice doctor who attributed the injury to the workplace exposure. Powers admitted he had no history of treating similar patients, had no specialized licensing in mold exposure, infectious disease, toxicology or related fields, and had never held himself out as an expert in that field previously. He also admitted he consulted with a New York infectious disease doctor and based his opinion on that consultation and a review of medical records of the claimant's co-worker. The JCC found the claimant showed by clear and convincing via accepted the environmental study and the claimant's testimony regarding other workers being sick and her improvement when away from the facility. The DCA reversed, finding under the Evidence Code and F.S. ss 440.09(1) and 440.02(1) .the testimony lacked sufficient factual foundation and was based on improper bolstering. The DCA found Powers'reliance on internet articles, the opinion of the New York doctor and the claimant's co-worker's medical records (which he testified were "facts and data") were insufficient. Additionally, his testimony failed to provide the factual foundation to establish occupational causation. The IME relied heavily on the identification of the co-worker to a specific mold, while no evidence existed that the claimant herself had ever been exposed to any mold, which arguably could have, but was not ever shown, by diagnostic testing. **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.