



Case Law Update

February 26, 2016

WINTER PARK
1560 ORANGE AVENUE, SUITE 500
WINTER PARK, FL 32789
TEL: (407) 571-7400
FAX: (407) 571-7401
www.hrmcw.com

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

Soca v. Advanced Auto Parts & Sedgwick Claims Servs., (1st DCA Feb. 23, 2016)

The claimant filed petitions for benefits and the E/C provided the benefits so the petitions were withdrawn. The E/C then filed a motion for costs. The claimant argued that none of the costs sought were due to the defense of the claims and eventually sent a 21 day sanctions letter and filed a motion for sanctions. The E/C withdrew the motion to tax costs after the sanctions motion was filed and the JCC ruled he was without jurisdiction. The DCA reversed the jurisdiction finding and directed the JCC to make a determination as to the merits of the claim for costs. [Click here to view Opinion](#)

Steinberg v. City of Tallahassee/ Tallahassee Risk Mgmt., (1st DCA Feb. 23, 2016)

Reversed an order denying EMA appointment. The DCA found that there was a conflict and that the claimant timely filed a Banuchi notice, preserving the issue for appeal. [Click here to view Opinion](#)

Mitchell v. Miami Dade Cnty., (1st DCA Feb. 23, 2016)

In a presumption claim on remand, the JCC found the claimant's slow pathway condition was congenital. The evidence was that there was a triggering event which caused the development of SVT (tachardia). The JCC found that as the slow pathway condition was congenital, the E/C rebutted the presumption. The DCA remanded to the JCC to determine if the triggering event was occupational in nature. The DCA details the nature of the 112.18 presumption and the fact that even with contrary evidence, the presumption remains until the JCC finds that it has been rebutted. [Click here to view Opinion](#)

Rojas v. Rodriguez,

47 (3d DCA Feb. 17, 2016)

In this personal injury case, the defense objected at trial to plaintiff's neurosurgeon's testimony that HNP was caused by twisting motion plaintiff described upon impact of accident. The defense objected that the doctor was testifying outside of his expertise and wasn't an accident reconstructionist, but didn't assert an objection under F.S. §90.702 or Daubert. The defense did not articulate their objection fell under Daubert until a post trial motion. The 3rd DCA remanded to reinstate plaintiff's verdict based on the lack of a timely Daubert objection. [Click here to view Opinion](#)

MBM Corp./Sedgwick v. Wilson

(Fla. 1st DCA 2/10/2016)

Evaluations/Burden of proving MCC

The DCA reversed the JCC's award of an evaluation of the cervical spine. On 10/16/10, claimant fell injuring his head and right shoulder. The E/C only authorized treatment for a diagnosed shoulder injury. Four years later, the claimant filed a PFB for a cervical evaluation, based upon the authorized shoulder doctor's recommendation. Notably he gave no opinions as to causal relationship between the shoulder and spine complaints. The DCA reproduced the entirety of F.S. §440.09(1) in the opinion, and noted that the claimant failed to meet his burden of proof in seeking the cervical evaluation. They noted the JCC used the incorrect standard in awarding the evaluation, conflating "the burden to prove entitlement to an investigation of the causal connection between voiced complaints and a previously accepted compensable condition with the burden to prove the causal relationship between a condition and the workplace accident in the first instance."(Emphasis added). They noted that while the claimant's report of ongoing complaints could be relevant in supporting expert testimony connecting the complaints, no such evidence existed here. A footnote indicates that as the PFB did not seek compensability of the neck condition, that issue may be litigated in the future. [Click here to view Opinion](#)

MBM Corp./Sedgwick v. Wilson

(Fla. 1st DCA 2/10/2016)

Evaluations/Burden of proving MCC

The DCA reversed the JCC's award of an evaluation of the cervical spine. On 10/16/10, claimant fell injuring his head and right shoulder. The E/C only authorized treatment for a diagnosed shoulder injury. Four years later, the claimant filed a PFB for a cervical evaluation, based upon the authorized shoulder doctor's recommendation. Notably he gave no opinions as to causal relationship between the shoulder and spine complaints. The DCA reproduced the entirety of F.S. §440.09(1) in the opinion, and noted that the claimant failed to meet his burden of proof in seeking the cervical evaluation. They noted the JCC used the incorrect standard in awarding the evaluation, conflating "the burden to prove entitlement to an investigation of the causal connection between voiced complaints and a previously accepted compensable condition with the burden to prove the causal relationship between a condition and the workplace accident in the first instance."(Emphasis added). They noted that while the claimant's report of ongoing complaints could be relevant in supporting expert testimony connecting the complaints, no such evidence existed here. A footnote indicates that as the PFB did not seek compensability of the neck condition, that issue may be litigated in the future. [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.

Treasure Coast	North Florida	Miami-Dade	Broward	Southwest Florida
772-489-2400	850-222-1200	305-423-7182	954-580-1500	239-939-2002