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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.

District Court of Appeal Cases

Edward Paradis v. Neptune Fish Market/RetailFirst Insurance Co. ___ So.3d ___, (Fla. 1st DCA 2/23/18)
120 Day Rule/Reasonable Investigation

The JCC denied compensability based on the claimant's failure of proof, and intoxication defense. The claimant injured himself at work in August 2015, breaking his hip. He went to the VA for care and suffered complications there, including MRSA. The carrier was unaware of the injury and complications until May 2016 and elected to pay and investigate under the 120-day rule found in F.S. s. 440.20(4), which ran through September 22, 2016. The Carrier did not file their denial until December 14, 2016. Throughout the months leading to the denial, the Carrier attempted to get the records from the VA through subpoena, and tried to depose the claimant. The VA only produced some of the records because the claimant would not allow the VA to release a full set. The Carrier even filed a motion to compel the VA to produce the records. However, the JCC denied the motion compelling the claimant to sign a full release. The Carrier also tried to depose the claimant on several occasions, but the claimant resisted. However, the Carrier did not contact witnesses, did not try to compel the claimant's deposition at the VA when he was hospitalized, and did not set the records custodian deposition for the VA. The DCA found no competent substantial evidence that the E/C demonstrated facts which they could not have discovered through reasonable investigation under 120-day pay and investigate period. Thus, the DCA found the E/C waived their right to deny compensability of the workplace injury because they did not do so within the 120-day period as required by 440.20(4). **Click here to view Opinion**

Ring Power Corporation v. Murphy, ___ So. 3d ___ (Fla. 1st DCA 2/23/18)
Statute of Limitations/Purpose of implanted device

The claimant underwent spinal fusion following a work accident of 2006. The doctors used rods and screws to stabilize the spine. After a year, the fusion had grown solid and medical testimony stated that the rods and screws were no longer performing any function. The last time the carrier provided benefits was 2013. In 2016, claimant filed a PFB for more treatment. However, the E/C asserted an SOL defense. The JCC agreed with the claimant's argument that the statute was tolled because the rods and screws which remained inside his body provided "remedial treatment" continuously, and the SOL never ran. However, DCA disagreed with the JCC and found that because the pins and screws no longer served any purpose, they did not fall within the tolling provision's reach. The DCA distinguished this situation from a knee replacement that effectively substitutes the function of the replaced body part. The E/C was not "furnishing remedial treatment" and therefore the DCA found the statute was tolled. **Click here to view Opinion**

Hernandez v. Hialeah Solid Waste Dept./Sedgwick CMS, ___ So. 3d ____ (Fla. 1st DCA 2/20/2018)
Medical Benefits/Transfer of Provider

The claimant's authorized doctor prescribed injections. The E/C insisted (the opinion provides no information as to why) another doctor perform them, which the JCC agreed with. On appeal, the DCA found that the E/C's refusal to authorize the treating doctor to perform the injections was a "de facto de-authorization of the doctor". They noted that a transfer of care under F.S. s. 440.13(2)(d) is allowed only where an IME determines the employee is not making appropriate progress in recuperation. **Click here to view Opinion**

Hunt v. Lightfoot, ___ So.3d ___ (Fla. 1st DCA 2/9/2018)
Discovery/Compelling Production of Surveillance

The DCA quashed the Circuit Court's Order compelling the production of surveillance video the Defendant did not intend to use at trial. The Defendant responded to a discovery request producing 2014 video they intended to use at trial, but not video from 2016 which they did not intend to use. The trial court required the defendant to produce the ID of the person that took the 2016 film, when it was taken and where. After providing this information, the court then granted a motion to compel the entire 2016 video without a hearing. In quashing that order, the DCA found that while the *existence* of all video must be produced, the *contents* are only discoverable if intended to be used at trial, or if extraordinary circumstances dictate compelling the content. The DCA rejected the plaintiff's argument that the 2016 video was necessary to show the 2014 video was only for a specific time, calling this proposition "self-evident". While there may be circumstances where fairness and completeness require production (ie. a continuous period of surveillance needing to show continuity), taking the argument to its logical end, all attorney work product could be discoverable if any evidence on that subject were presented at trial. **Click here to view Opinion**