



Case Law Update

Week of February 4, 2019

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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.

NO DCA DECISIONS YET FOR FEBRUARY

HRMCW Cases

JCC Stanton (Gainesville)(Scott Miller) (2-4-19) – Denied claim pursuant to 440.105(4)(b)(1) and 440.09(4)(a). Claimant reported to multiple physicians, including the E/C's IME, Dr. Chaumont, he was in continuous pain (left arm), at a pain level of 7 or higher at all times, could not use his left arm at all and wore a sling most of the time. Surveillance showed the claimant freely using his left arm. Dr. Chaumont testified the surveillance was completely inconsistent with the claimant's presentation to him. He noted the surveillance was evidence he had no limitation with his left arm whatsoever. The JCC agreed characterizing the "cumulative effect" of the footage as shocking and held the claimant made false and misleading statements in pursuit of his workers' compensation claim. [Click here to view Order](#)

JCC Johnson (West Palm Beach)(Paul Terlizzese)(2-5-19) – Denied orthopedic specialist, awarded occupational medical specialist of claimant's choice. The E/C initially authorized Concentra, and several of their physicians saw the claimant. On 7/28/17, Dr. Green, at that facility, placed her at MMI with a 0% rating. The claimant requested a one-time change from Dr. Green and the E/C timely authorized Dr. Rodriguez at MD Now, another walk-in-clinic. The next day (also timely) the E/C authorized Dr. Rosenthal of MD Now in order to get the claimant a quicker appointment. The claimant never showed to this clinic. The E/C argued that Concentra, with multiple physicians, was authorized, as opposed to a single doctor, and MD Now (similar clinic with multiple physicians) was

appropriately authorized as the one-time change. The JCC disagreed finding the statute required a change in **physician** as defined in 440.13(1)(p) and concluded the entity of MD Now did not meet the definition of a physician. The JCC found that Dr. Green was primarily responsible for the claimant's care at Concentra, specialized in occupational medicine, and was the proper one to request a one-time change from. The JCC further found that Dr. Rosenthal did not specialize in, or have any experience in, occupational medicine and held that 440.13(2)(f) requires the one-time change to be in the same specialty, and therefore, because the E/C did not timely authorize an occupational medicine specialist, the claimant could select. The claimant was also seen on an emergency basis at Wellington Regional following the accident. The ER physician noted, "I will make sure that she has a good follow-up with orthopedics". However, the claimant failed to introduce any evidence establishing this care was medically necessary. [Click here to view Order](#)

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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