



Case Law Update

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

District Court of Appeal Cases

City of Hialeah/Sedgwick v. Bono,
Misrepresentation/Elements

(Fla. 1st DCA 1/19/17)

The JCC reversed and remanded the JCC's order rejecting the misrepresentation defense. They noted the JCC should have analyzed whether (1) the claimant made any false, fraudulent, or misleading statements, and (2) whether such statements were made for the purpose of obtaining benefits. In denying the defense, the JCC analyzed the facts under civil fraud law, and characterized the claimant's "inconsistencies" as "impeachment". The JCC on remand is to analyze the case under the applicable standard. [Click here to view Opinion](#)

Baricko v. Barnett Transport/York,
Applicability of Daubert to WC

(Fla. 1st DCA 1/17/17)

The DCA rejected all six of claimant's arguments in a PCA opinion, but specifically wrote to address claimant's contention that the JCC erred in applying Daubert and its limits on admissibility of expert opinion testimony. The claimant argued that Daubert was inapplicable to WC proceedings and that it had not been adopted by the Florida Supreme Court. The opinion notes that the legislature has specifically stated Daubert applies to WC, and that while the Supreme Court may or may not ultimately approve Daubert for Article V (county/circuit court) proceedings, it does not have authority over administrative proceedings (including WC). Finally, citing prior opinions approving the standard in WC (Gaiamo and Booker) and the fact that the 4th DCA approved Daubert's applicability even without an ultimate ruling from the Supreme Court, they pronounced the argument frivolous. [Click here to view Opinion](#)

Gonzalez v. Visa/Travelers
TTD/TPD/Westphal and Food Lion

(Fla 1st DCA 12/12/2016)

The DCA reversed the JCC's denial of TPD past 104 weeks, based upon the subsequent rulings in Westphal and Food Lion. They affirmed the denial of TTD as neither side challenged the ruling that there was no medical evidence of total disability. The claimant sought TPD from 9/24/14 through 8/24/15. The JCC found the claimant was TPD through 7/9/15 and attained MMI "shortly thereafter". On remand, the JCC is to determine when MMI was specifically reached prior to 8/24/15. [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	954-794-6933	239-939-2002