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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) or Matthew Troy (mtroy@hrmcw.com) with questions or comments on any of the listed cases.

No new DCA decisions since July 20 newsletter

District Court of Appeal Cases

Gonzalez v. Quinco Electrical, Inc./Zenith Ins. Co., (Fla. 1st DCA 7/15/2015)
One Time Change/Effectiveness of Request

Bill Rogner for Appellees

The claimant attorney filed a PFB, and then three weeks later, filed a Notice of Appearance. On the second page of that Notice, the claimant attorney inserted a request for a one time change. He admitted to the JCC this was done to "take advantage of" his belief that adjusters do not always fully read every document they receive. The E/C authorized their choice of a one time change doctor on the sixth day, which the claimant attorney alleged resulted in a waiver of their ability to select the physician. The JCC found under the circumstances the E/C timely responded to the claimant's request for a one time change. The DCA affirmed the JCC's ruling, finding it within his discretion to consider whether an E/C's failure to respond within five days was *because of* the form or context of the request. The DCA pulled no punches in finding the claimant attorney's tactic "*had the effect of delaying the delivery of benefits and increasing litigation and expense, directly contrary to the self-executing system intended for workers' compensation claims.*" They continued that *"(t)his dispute was not the result of inadvertence or ignorance, but rather was the result of an attorney's intentional act that we consider inappropriate sharp practice and gamesmanship*." Quoting the Oath of Admission to the Bar and the Bar's Creed of Professionalism, they noted that *"(l)awyers' adherence to these pledges and duties would eliminate the improper "gotcha" tactics that generate disputes such as this that unfairly and needlessly consume public and private resources while delaying the workers' compensation process and making it more expensive*." One time changes must be requested in a "readily apparent, unobscured and unambiguous" manner to place the E/C on notice of the request. **Click here to view Opinion**

Sanchez v. American Airlines/Sedgwick CMS, **(Fla. 1st DCA 7/14/2015)**
Statute of Limitations/Tolling of SOL

The claimant appealed the JCC's Order finding his claims were barred by the Statue of Limitations (SOL). Claimant's April 2014 PFB was filed more than two years after his date of injury and more than one year after the last provision of medical or disability benefits. However it was filed within one year after the JCC dismissed a prior PFB and ordered the employer/carrier to pay attorney's fees. The question for the DCA was whether the payment of attorney's fees to Claimant's counsel-with no other medical or disability benefits being paid simultaneously to Claimant and no PFBs pending-was sufficient to extend the statute of limitations under subsection 440.19(2). The DCA affirmed the ruling, noting it did not conflict with Longley, as here there was no other PFB pending when the April '14 PFB was filed. They also rejected the argument that the payment of attorney fees within the year period did not act to toll the SOL as it is "well settled" that the payment of fees is neither payment for compensation nor the furnishing of medical benefits. **Click here to view Opinion**

Scherer v. Volusia County Dept. of Corrections/Volusia Count Risk Mgmt. **(Fla. 1st DCA 7/9/15)**
Firefighter Presumption/Applicability of Presumption to DOA's prior to 2011 amendment

Claimant was a firefighter who stopped working on 10/27/09 due to cardiomyopathy. He was recommended for a heart transplant, but instead received a defibrillator, and returned to work on 4/27/10. His condition declined however, and he retired on 1/27/12, ultimately receiving a heart transplant. In June and September of 2013 he filed 5 PFBS under both dates of disablement (10/27/09 and 1/27/12), which serve as the dates of injury in a presumption claim. The County argued that under the 2011 amendments, the claimant should not be entitled to the presumption, as he did not file PFBs for either date within 180 days of leaving employment per subsection (1) (b) 1. The JCC ruled that the 2011 amendments to F.S. 112(18)(1)(b)4 prohibited the claimant from relying on the statutory presumption for both dates of accident based upon his interpretation of the statute and various theories of statutory construction. The DCA entered into its own lengthy analysis of the various subparts of the amendment. Ultimately however, they reversed and remanded, finding the 180 day limitation to file a claim only applies to dates of accident after 7/1/2010 and that a claim did not require a petition, only the vesting of rights under Chapter 440. Therefore the claimant was entitled to the presumption for the first date of accident but not the second. A dissent argued the subpart (1)(b)1 creates the reverse presumption and (1)(b)4 establishes the deadline to invoke the presumption. **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.