



Case Law Update

July 22, 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) with questions or comments on any of the listed cases.

District Court of Appeal Cases

Luciano, Jr. v. Adecco/Broadspire,
Prevailing Party Costs/Evidence

(Fla. 1st DCA 7/20/2016)

The DCA reversed an award of prevailing party costs to the E/C, finding no admissible evidence as to the requested amount. The E/C sought \$8,421.07 for surveillance, labor market research and vocational expert services as the prevailing party. The JCC sustained the claimant's hearsay objection to invoices and the carrier's payout ledger, but then allowed the E/C attorney to testify regarding the amounts listed in the payout ledger. On cross examination, the E/C attorney conceded he only knew about the amounts via the payout ledger, and through the fact that his firm had not received any notices the amounts were unpaid. The DCA reversed, finding the JCC abused her discretion in allowing the testimony, which relied solely on the excluded documentary hearsay. In a footnote the DCA suggested the preferred method would be to present adjuster or record custodian testimony to establish specific bills were actually paid. [Click here to view Opinion](#)

Caterpillar Inc. v. Amaya,
Wrongful Termination/WC Retaliation, Damages

(Fla. 3d DCA 7/13/16)

The 3d DCA withdrew their 3/2/16 opinion following rehearing. Originally the plaintiff obtained a jury verdict of \$573,883.64 for front pay and back arising out of Caterpillar's alleged retaliatory and wrongful actions. The jury did not award any of the claimed damages for emotional distress and mental anguish.

On Rehearing, the DCA reversed the award of front and back pay. The claimant was on a no work status following termination and up to the time of trial, which was compensable under the WC system. As such, he could not demonstrate Caterpillar's retaliation was the "but for" cause of either pre trial or future lost wages. Had the plaintiff been cleared for work after being placed on "no work" status due to his physical on-the-job injuries, and had the jury found that Amaya could not work due to a mental or emotional injury based on Caterpillar's retaliation conduct, then the DCA would have affirmed the jury's award for back and future pay and benefits. [Click here to view Opinion](#)

Santana v. City of Tallahassee,
Certiorari/Compelling Production of Medical Records

(Fla. 1st DCA 7/13/16)

The JCC ordered the claimant's psychologist to produce records related to a fitness for duty evaluation initially requested by the employer. The DCA rejected the claimant's Petition to quash the Order, as the fitness for duty evaluation was not privileged under the patient/psychotherapist exception. The Order also limited production to the fitness for duty evaluation. Although not directly before the court, the DCA noted that the carrier's subpoena to the psychologist, issued after the JCC's Order, sought "any and all" records. They were confident this would be addressed if necessary by the JCC. [Click here to view Opinion](#)

THG Rental and Sales of Clearwater/Summit Holdings-Claims Center v. Arnold, ___ So. 3d ___ (Fla. 1st DCA 7/6/16)

Misrepresentation/Scope of Defense and Pleading with Specificity

The DCA granted the E/C Motion for Rehearing of its original 3/17/16 opinion, finding their prior direction of remand for the E/C to “replead” their misrepresentation defense would unnecessarily complicate the case.

The claimant alleged injury to his back and right knee. After the third (of five) PFBs, the E/C responses denied benefits solely “based on misrepresentation.” The E/C clarified on the Pre-Trial, stating “misrepresentation per 440.09(4) and 440.105 –physical abilities and post accident earnings”. At trial the claimant sought benefits only for the right knee. For the first time two days before the trial, the claimant objected the E/C’s defense lacked the specificity required under 60Q-6.113(2)(h). The E/C presented video and medical testimony related to alleged misrepresentations regarding the back condition. The JCC denied the specificity objection and denied the misrepresentation defense, finding the misrepresentations concerned the back, which was not an issue at the time.

Both parties cross appealed. The DCA’s substituted opinion still agrees that the misrepresentation defense need not address a specific body part, and that if the JCC determines any misleading statements were made with the intent to secure benefits, all benefits must be denied. They agreed that the E/C’s defense did not initially specifically “detail the conduct” forming the basis of the misrepresentation. However, the substituted opinion found that the E/C’s clarification of their misrepresentation defense, filed the same day the claimant objected to specificity, satisfied the 10 day pleading requirement and sufficiently placed the claimant on notice of the substance of their defense which was fully litigated. On remand, the JCC will consider the defense without limitation as to the specific right knee injury. Finally, the opinion dismissed outright the E/C’s position that the claimant needed to offer evidence of an unsuccessful job search to be entitled to TPD. [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