



## 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](mailto:rturner@hrmcw.com)) with questions or comments on any of the listed cases.

### *District Court of Appeal Cases*

**Cal-Maine Foods/Broadspire v. Howard,**  
**Misrepresentation/Elements of Proof**

(Fla. 1<sup>st</sup> DCA 7/26/2017)

The JCC denied the E/C's misrepresentation defense. The DCA issued a lengthy, strongly worded opinion finding the JCC erred in doing so for multiple reasons. The opinion provides extensive detail surrounding the claimant's misstatements, but in summary he alleged that, in addition to injuring his neck and back, he also (per his amended PFB) sustained facial and brain injuries when he was thrown from a front end loader. The E/C discovered that several months after the alleged accident (and his termination for testing positive for meth and driving a backhoe into a body of water), he presented to Shands complaining of headaches after being hit in the head with a baseball bat eight days prior. He presented to a second ER a month later complaining of headaches "for a month". Neither visit mentioned neck or back pain, or a work place accident. In his first deposition, he stated the bat incident was false, that he later corrected the description (although no evidence showed this) and he failed to mention the workplace incident as he felt he would not receive treatment. The E/C's IME examined the claimant, and confronted him about the bat incident, which he essentially denied. In deposition, the E/C IME also indicated claimant denied prior neck and back injuries, contrary to records provided to the IME. The claimant failed to disclose the above information to a treating neurologist as well. Claimant told his own IME the source of his problems was the work accident, with no further information. The E/C e-filed medical records which documented the Claimant had a history of similar, prior medical complaints and treatment, including: lower back injuries 1997 after an automobile accident; chronic back pain in 2006-2007; medical care and diagnostic studies in 2012 for constant neck pain only relieved by pain medications; injuries from a motorcycle accident, which required ongoing medical treatment for twelve years; and a previous recommendation for cervical surgery. At the merit hearing, the claimant announced he was seeking only compensability for the lower back, and dropped the remaining facial, neck, concussion and brain injury claims.

The JCC, despite the claimant testifying at trial that his allegations of facial/brain injuries were "not true", denied the E/C misrepresentation defense, finding the multiple misstatements were "moot" for

the purpose of obtaining benefits. The DCA disagreed, noting that the E/C must prove 1) whether a false (or fraudulent or misleading) oral or written statement was made by the person; and 2) whether, at the time the statement was made, it was made with the required intent to obtain benefits. While the JCC clearly found the claimant made multiple misrepresentations, the DCA noted the JCC erred in finding the claimant did not misrepresent his prior conditions and injuries to the IMEs because they already possessed the information. The JCC was not allowed to “excuse or nullify” false prior medical history because the doctors actually possessed accurate medical information, regardless of the source. In doing so, the JCC erred in placing an affirmative duty, not statutorily mandated, on the evaluating physicians to interrogate the Claimant regarding known misrepresentations. Nothing in either 440.105(4) or 440.09(4) provides a basis for the JCC to exonerate such misrepresentations. The opinion also rejected the JCC’s reasoning that because the claimant did not seek payment of the Shands/bat treatment, and because he did not allege he was hit with a bat at work, such statements could not constitute a misrepresentation under the statute. To the contrary, the subsections of F.S.§440.105(4)(b) broadly state that any acts made in support of obtaining benefits may suffice to invoke the statute. Finally, the opinion notes the claimant maintained his falsehoods for months, and dismissed all but the low back claims at the 11<sup>th</sup> hour. Contrary to the JCC’s findings, such “manipulation of pleadings” cannot shelter the claimant. As the DCA noted “It should not be incumbent upon litigants to undertake exhaustive investigation to flush out the mendacities of an adversary. The parties have a right to expect that all statements, whether written or oral, are truthful and adequately responsive.” [Click here to view Opinion](#)

**Ft. Walton Medical Center/Broadspire v. Young**

**(Fla. 1<sup>st</sup> DCA 7/14/2017)**

**PTD/Retrospective/Prospective Application of Supreme Court Ruling**

The JCC awarded PTD based upon the DCA’s original Westphal I opinion, finding the claimant was not at MMI and had been paid in excess of 104 weeks. The E/C timely appealed, and about seven weeks later the Supreme Court issued Westphal II. The DCA was asked to determine the retrospective/prospective application of an appellate decision overruling a former decision. Although the Supreme Court had held in the 1944 Strickland case that a subsequent overruling decision may not destroy rights acquired under prior case law, the particular statute in question, F.S. 440.15(2)(a), had never been construed by a court of “supreme jurisdiction”. Rather, the interpretation was by the DCA, an intermediate court. Additionally, at all times relevant to this case, review of Westphal I was pending at the Supreme Court. As the JCC’s decision was based upon the claimant reaching “statutory MMI” at the end of 104 weeks, PTD was awarded in error under Westphal II. The case is remanded for proceedings consistent with Westphal II. [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.*

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