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

District Court of Appeal Cases

Arena Football League/Arena Football One, LLC v. Bishop, (Fla. 1st DCA 6/6/2017)
Employer/Employee Relationship – Contractual Interpretation

Claimant played a season of Arena League Football for the Orlando Predators and then left. He later participated in a two day tryout, in which he sustained injuries on the second day. The JCC found the claimant was "under contract" at the time of his alleged injury', and the League appealed. The issue was whether the Standard Player Contract the claimant signed made him an employee entitled to benefits. The contract had two other lines for signatures; one for the "Team Rep"(Mandatory and signed by the coach) and one for "League Signature", which was never signed. The DCA analyzed the contract and the parties' competing arguments under contract law, noting that contracts require mutual assent. They rejected the claimant's argument that the lack of a league rep's signature could be excused as the contract did not specifically say it was required. They also rejected claimant's arguments that provisions in the contract for "disapproval" or approval of the contract by the league suggested an agreement, as without all signatures no contract was ever formed. Finally, the DCA recognized that although conduct of the parties can evidence assent, they found the leagues' only assent was to allow the claimant to tryout. They declined to find that allowing a player to participate in a tryout showed the assent to "hire" the claimant as a football player for the rest of the season. Absent an employer/employee relationship, the DCA reversed and remanded the Order for entry of new Order denying the claims. **Click here to view Opinion**

Delgado v. City Concrete/FCCI, **(Fla. 1st DCA 6/6/17)**
Attorney Fees/Due Process

The parties settled the case pre-Castellanos, reserving on an E/C paid fee. Post Castellanos, the parties sought approval of a $20,000 E/C paid fee for past benefits obtained. The JCC subsequently held a hearing at his own request to discuss the stipulated fee and a "couple of matters". After a brief discussion, the JCC ordered Claimant's counsel to submit his time records, following which he entered an Order saying he could not, in good conscience, approve the fee, reduced the fee to the stat fee of $4,293.80, and ordered the remainder to be paid directly to the claimant. The claimant appealed on numerous grounds, but the DCA focused on the due process issue. Noting that the parties are required to submit fees for approval by the JCC, and the JCC has the authority and obligation to review fees, due process requires notice so parties may fairly present their case. In contrast to prior case law affirming a JCC's reversal of a proposed fee, in this case the DCA found the JCC's brief hearing and subsequent seven page order which "assumed certain unestablished facts and strongly suggested the attorneys engaged in collusion to commit fraud under F.S. 440.105(4)" did not comport with such requirements. The DCA disagreed with the JCC's findings that an evidentiary hearing took place, as the parties were not asked to submit evidence or witnesses and were not asked about fraud or collusion. The JCC denied subsequent motions for rehearing seeking to dispute the assumed facts and to provide further evidence, which were denied. As such the case was reversed and remanded. The DCA noted the case should not be construed as limiting the power of JCCs to approve or disapprove fees under F.S. 440.34(1). **Click here to view Opinion**

Lewis v. Dollar Rent A Car/ESIS, **(Fla. 1st DCA 6/8/2017)**
FCE/Authority of JCC to Compel

Claimant previously settled her indemnity claims related to the 1989 Industrial Accident. In March of 2016, the E/C filed a Motion to Compel Claimant's Attendance at an FCE. They alleged but did not attach any medical documentation. In May of 2016, the claimant filed a PFB seeking authorization of prescriptions. The day before the parties attended a hearing on the E/C's motion to compel, the E/C e-filed medical records of the authorized doctor that stated the FCE was "medically necessary". The JCC denied claimant's objections, finding the authorized treater's records were admissible, and that there was no showing the claimant did not already have the records. The JCC ordered the claimant to attend the FCE. Claimant filed a Petition for Certiorari review, asking the DCA to find that the order is "(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal." The last two elements are generally considered together as "irreparable harm." The DCA entered into a lengthy analysis of prior case law analyzing a JCC's authority to order claimants to attend IMEs, EMAs, FMEs and FCEs. They noted that an FCE does not appear in Chapter 440, and discussed prior case law which suggested that an FCE may be compelled where there is "medical necessity". Ultimately, they found that those prior cases do not authorize compelling the claimant, even where medical necessity is shown, and distinguished the JCC's authority where there is no pending PFB which is dependent upon the FCE. They granted the claimant's Motion and quashed the Order compelling her attendance at the FCE. **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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