



HURLEY ROGNER
MILLER, COX & WARANCH, P.A.

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 Jacksonville/City of Jacksonville Risk Mgmt. v. O'Neal, ___ So. 3d ___ (Fla. 1st DCA 3/15/18)

Correctional Officer Presumption/Requisite Evidence to prove “Trigger Theory”

The E/C appealed the JCC’s finding of compensability and benefits related to heart disease. The JCC apparently awarded benefits based on the “trigger theory”, which requires (1) an underlying condition, (2) a trigger and (3) resulting heart disease. The DCA found the JCC identified an occupational trigger (adrenaline in the form of stress” but the Order lacked an identifiable genetic condition, and was vague as to the ultimate cardiac diagnosis. As such the DCA could not determine whether the JCC erred in so applying the theory. On remand the JCC may reopen the medical evidence to address the matter. [Click here to view Opinion](#)

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Rodriguez v. Tallahassee Fire Dept./City of Tallahassee, ___ So. 3d ___ (Fla. 1st DCA 3/15/18)

Firefighter Presumption/EMA testimony re. PIR

The DCA reversed the JCC’s denial of impairment income benefits based upon the EMA’s 15% rating. The E/C authorized an ablation to treat the claimant/firefighter’s arrhythmias. Post ablation, the authorized treating cardiologist assigned a 0% (Class I) PIR with a recommendation to take aspirin daily. The claimant’s IME testified the claimant had a 16% PIR (Class II) because the ablation procedure was analogous to having a pacemaker. The EMA (Castello) said a 15-16% (Class II)PIR was appropriate. His first reason repeated the pacemaker analogy, and the second noted that the recommendation for aspirin use encompassed the Class II use of drugs parameter. The JCC rejected the EMA’s opinion regarding the pacemaker analogy. The DCA affirmed that finding, noting that clear and convincing evidence existed to reject the comparison of the ablation to a pacemaker implantation. The DCA disagreed, however with the JCC’s strict adherence to the definition of “medicine” in F.S. s 440.13(1)(l) (only generic or single source patented drugs) and found no clear and convincing evidence to reject the EMA’s opinion that aspirin was a drug sufficient to trigger a Class II Impairment rating and attendant IIBs based upon a 15% rating. [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