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

Case Law Update

Week of March 25, 2019

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.

11th Circuit Cases

McGuire v. United Parcel Service, Inc., (3/29/19)
ADA/FCRA and Workers' Compensation Retaliation

The plaintiff sustained two separate on the job injuries and ultimately sued UPS alleging disability discrimination under Federal and State Law, and Workers' Compensation Retaliation under F.S. s. 440.205. The 11th Circuit affirmed summary judgment as to the Disability claims, finding UPS appropriately accommodated the Plaintiff in a part-time position, and was not required to place him in a full time position they either did not have, or which in doing so would violate union seniority or narcotics/safety policies for such placements. The Court also affirmed the Dismissal of the WC Retaliation claims, noting that under F.S. s. 440.205, a plaintiff must plead facts giving rise to a reasonable inference that: (1) he engaged in statutorily protected conduct; (2) he was adversely affected by an employment decision; and (3) there was a causal connection between the statutorily protected conduct and the adverse employment decision. Despite having leave to amend, the Plaintiff failed to sufficiently plead facts to support the third element. Specifically, the Plaintiff was required to provide dates to show a temporal connection between his application for WC benefits and the alleged adverse employment action. The conclusory allegations that UPS retaliated when he filed a WC claim, and that they refused to place him back at full duty were insufficient. Click here to view Opinion

-more-

DCA Cases

Meehan v. Orange County Data & Appraisals/Johns Eastern, (3/20/2019)
MCC/Break In Causal Chain/Impact of Prior Stipulations

The DCA reversed and remanded the JCC's denial of medical care, finding that the E/C's "broad stipulation" accepting the claimant's "building related illness" and subsequent failure of the E/C to show a break in the causal chain compelled an Order providing the benefits. The claimant alleged exposure to various substances, and breathing problems with a DOA of 9/30/1997. In 1998 the JCC approved a stipulation of "compensability of exposure, building related illness and indoor air quality problems". The E/C authorized Dr. Varraux, who in 2002 diagnosed a host of respiratory illnesses (bronchitis, RADS, rhinitis, sinusitis, rhinosinopulmonary syndrome and occupational asthma), and the E/C provided medicine and bronchodilators. 15 years later, the E/C obtained a peer review and issued a denial, stating the work accident was not the MCC of the need for medical treatment. The E/C's IME Dr. Brooks opined that the claimant either suffered from non-related conditions (Vocal Cord Dysfunction and allergic Rhinitis) or did not have the conditions which Dr. Varraux had diagnosed (asthma and sinusitis), testified had gotten worse, and continued to treat. The E/C asserted on the Pre-Trial that the IA was no longer the MCC of the need for treatment or disability and that the prescriptions were not medically necessary. No EMA was appointed. The JCC denied the benefits, accepting Dr. Brooks' opinion that the claimant did not have asthma and the claimant had not made specific claims for treatment of vocal chord dysfunction and allergic rhinitis. The DCA reversed, noting that although a claimant has the burden to prove compensability, once that is established, the burden shifts to the E/C to show a break in the causal chain between the injury and the requested benefit. The DCA held the E/C did not sustain this burden and further Dr. Varraux confirmed that all of his treatment was medically necessary for the conditions for which he was treating the claimant. The opinion also notes the JCC erred in ruling Dr. Brooks' testimony satisfied the E/C's burden to show a break in the causal chain. The E/C's broad stipulation, and the JCCs failure to address (1) the medial necessity of other treatment for conditions Dr. Varraux treated in addition to asthma and (2) the distinction, if any, between the rhinitis Dr. Varraux had been treating since 2002 and that which Dr. Brooks diagnosed. The E/C also did not present evidence that the claimant's symptoms had changed since the date of the joint stipulation or that any new unrelated conditions has arisen. **Click here to view Opinion**

-more-

Payne v. Allstaff, Inc./Summit, **(Fla. 1st DCA 3/13/2019)**
Temporary Disability Benefits/Elements of Proof

Claimant alleged a rash injury in January of 2017. The E/C accepted the case under the 120 day rule and authorized medical care, which resulted in work restrictions. The E/C ultimately denied compensability timely in March of 2017 when the authorized doctor assigned MMI, stating there had never been a work related injury in the first place. The claimant sought TPD benefits based on the restrictions that were assigned in January and February. The JCC denied the TPD benefits. The DCA noted that to the extent the JCC denied based upon the doctor's opinion that there never was a compensable injury, this was error, as the E/C is to pay all benefits under the 120 day rule as if the claim were compensable, up until denial. However, the DCA affirmed the denial based upon their finding that the claimant failed to sustain his burden to establish that the workplace injury resulted in a reduction of wages below 8% of the pre-injury AWW. They found no competent, substantial evidence existed, rather only vague and unpersuasive testimony with no supporting documentation. **Click here to view Opinion**

Marine Max, Inc./Seabright Insurance v. Blair, **(Fla 1st DCA 3/7/19)**
Duty to provide medical treatment with authorized provider seeking pre-pay in excess of fee schedule

The E/C authorized Dr. Yunis to treat the claimant from 2010-2014. Some of his bills were paid allegedly at fee schedule, some allegedly over fee schedule. The doctor left his practice in 2015 and started a new practice. In 2017, the claimant filed a PFB for further treatment with Yunis. The successor TPA and adjuster agreed to authorize him, but when contacted, the doctor announced he would only accept pre-payments in excess of the fee schedule. The adjuster rejected that proposal, and authorized an alternate provider, whom the claimant refused to see. At hearing the claimant argued he had an established doctor/patient relationship and the E/C's "deauthorization" of Yunis for his payment demands was improper under the statute. The E/C argued that payments in excess of the fee schedule are only permissible under F.S.s.440.13(13)(b) where the carrier and doctor agree, and that their only option was to authorize an alternate provider. The JCC ruled that the E/C improperly deauthorized Yunis and the E/C could still pay and then dispute his charges. She ordered authorization and payment. The DCA held the JCC has no authority to order payment, as such reimbursement disputes are solely under the jurisdiction of DFS, and that she erred in stating a pre-payment would later be subject to dispute and possible reimbursement. They concluded however, that she was correct to order the E/C to authorize Yunis. This, despite acknowledging the E/C's argument that it is illogical to order authorization for a doctor who won't accept the fee schedule. The DCA acknowledged this point, and said that authorization only allows the doctor to demand compensation if he chooses to treat the claimant. They acknowledged the dissent's list of cases discussing patient/doctor relationship, but found they did not create a rule that carriers must pre-pay above fee schedule. A rule stating such must come from the legislature.

The lengthy dissent cited additional evidence, suggested estoppel applied (it was not pled/argued), suggested the carrier had a duty to negotiate with the doctor, and ultimately questioned what the practical result of the opinion might be. **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