



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

Moise v. Disney Pop Century Resort/WDW WC Dept,
Statute of Limitations/ Dismissal for Failure to Prosecute
Bill Rogner

(Fla 1st DCA 4/30/218)

The DCA affirmed the JCC's dismissal of PFBs filed after a Motion to Dismiss for failure to prosecute, but before the Order dismissing the prior PFBs. However the DCA wrote to clarify that a JCC need not find the subsequent PFB was filed with the intent to toll the Statute, as had been suggested in Akers v. State of Florida. Claimant filed PFBs on separate 2011 and 2013 claims. The claims were subsequently withdrawn following mediations in 2013 and 2015, with fees and costs reserved. The E/C subsequently filed Motions to Dismiss for failure to prosecute, but prior to the Order dismissing those PFBs, the claimant filed additional PFBs. The E/C asserted SOL as to these PFBs, and the JCC subsequently agreed those PFBs were barred by the SOL after the earlier fee/costs claims were dismissed for failure to prosecute. (claimant did not appeal that decision). However, the JCC noted the facts were similar to Akers, and found the later PFBs were filed with the intent to toll the SOL. The DCA rejected this reasoning, deeming the intent in filing the PFB irrelevant. Instead, they clarified that Limith v. Lenox on the Lake, 163 So. 3d 616 (Fla. 1st DCA 2015)(also a Bill Rogner/HRMCW case) controls. Once the JCC grants a motion to dismiss which extinguishes pending claims, and that ruling becomes final, the subsequent PFBs are retroactively barred by operation of the SOL, and are a nullity. The DCA noted that to accept claimant's argument that subsequent PFBs may toll the SOL in this instance would allow a party to avoid dismissal in every case by filing a new PFB once the Motion to Dismiss is filed. They noted the lack of record activity and lack of good cause are contingencies within the claimant's control. [Click here to view Opinion](#)

Willoughby v. Madison Correctional Institute/Div. of Risk Mgmt.,
Attorney Fees/Evidence to Reject Stipulated Agreements

(Fla. 1st DCA 5/3/2017)

As with the recently published cases of Gomez v. Frank Crum, Inc., 228 So. 3d 735 (Fla. 1st DCA 2017), and Banegas v. ACR Environmental, Inc., 228 So. 3d 734 (Fla. 1st DCA 2017), the DCA found that the JCC did not have sufficient facts to issue an order (1) declining to approve a stipulated E/C fee, (2) approving a reduced fee, and (3) ordering the balance remitted to the claimant. As this was reversible error, the case was reversed and remanded for proceedings consistent with the opinion.

[Click here to view Opinion](#)

Harbor Freight/Safety National Casualty Corp. v. Whitehead,
120 Day Rule/Specific Pleading Required to Assert E/C waiver

(Fla. 1st DCA 5/18/18)

The JCC awarded benefits, finding the E/C failed to deny compensability within 120 days of initially providing benefits. As the claimant failed to assert the E/C's waiver timely or specifically, the DCA held the JCC erred in invoking waiver *sua sponte*, and reversed the award of benefits, per the recent 2017 Teco Energy v. Williams case. [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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