



Case Law Update

November 20, 2015

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) or Matthew Troy (mtroy@hrmcw.com) with questions or comments on any of the listed cases.

Florida Supreme Court

Doerr Trust re. Central Fl Expressway Authority,
Attorney Fees/Eminent Domain Proceedings

(Fla. 11/5/15)

No, the Supreme Court *still* hasn't ruled on Castellanos or any of the other pending WC cases, but they did issue an opinion on a case with similar concepts. This case considered the question of attorney fees in Eminent Domain proceedings, which generally are paid as a percentage of "benefits achieved." Specifically, the court found that a property owner may invoke a secondary fee calculation under the statute if the condemning authority engages in excessively litigious tactics. The fee statute is not the same as F.S. §440.34. However, there are enough similarities that make for interesting reading into the possible mindset the court may have in relation to the pending WC cases on fees. [Click here to view Opinion](#)

District Court of Appeal Cases

Pavan v. North Florida Surgical Pavillion/Broadspire
P.C.A. – No written opinion
Bill Rogner

(Fla. 1st DCA 11/20/15)

DCA rejects claimant's argument that failing to identify specific compensable injury "buys" entire cervical spine.

Boley Centers, Inc./Comp Options v. Vines
Psychiatric Injuries/Compensability

(Fla. 1st DCA 11/16/15)

The E/C appealed four separate issues related to the JCC's award of certain psychiatric treatment and resulting disability. The claimant also cross appealed. The DCA found that although the JCC erred under F.S. s. 440.13(5)(e) in admitting certain medical opinions, that error was harmless. They found no error regarding the awards of compensability or disablement, but agreed the JCC did not have the authority to order the E/C to pay medical providers and third party payers after a certain date, only to find that those visits were medically necessary. Finally, the DCA agreed with the claimant the both psychiatric visits were compensable emergency care and not just the first visit. [Click here to view Opinion](#)

Gomez-Lujano v. Palm Beach Grill-Houston's/Travelers Ins
PTD benefits/Westphal

(Fla. 1st DCA 11/19/15)

Claimant received medical care, 104 weeks of temporary indemnity and IB benefits from his compensable injury. The DCA found the JCC improperly denied the claim for additional IB benefits, as that claim had not been mediated. They ruled, however, that the JCC correctly interpreted the en banc Westphal ruling in denying PTD and additional temporary benefits. Although Westphal "supplants a claimant's need to establish MMI" it did not relieve the claimant of his burden to prove the other elements of his claim for PTD benefits. The opinion also rejected the claimant's argument that the denial of additional temporary benefits past 104 weeks violated his constitutional rights to access to courts and due process. [Click here to view Opinion](#)

Hawkins v. Publix Super Markets, Inc/Publix Risk Management
TPD/Refusal of Suitable Employment

(Fla. 1st DCA 11/12/15)

The JCC denied benefits pursuant to F.S. §440.15(6), which may disqualify a claimant from receipt of TPD based on a refusal of suitable employment. In reversing and remanding the DCA noted that disqualification, however, applies only "during the continuance of a refusal of employment." The opinion notes the refusal does not permanently limit TPD, and the employer has to establish the availability of the job for each applicable period to be able to deny TPD. As the JCC's Order failed to make specific findings as to the date of the initial offer of employment, the dates of continued availability of the suitable job, the dates of the claimant's refusal, or whether the refusal continued after employment was terminated, the Order lacked sufficient facts to be affirmed. [Click here to view Opinion](#)

Frankel v. Loxahatchee Club Inc./Amerisure
Apportionment/ Prevailing Party Costs

(Fla. 1st DCA 11/4/2015)

The claimant sustained compensable right shoulder, thoracic and lumbar injuries. He testified that 15-20 years prior, he “ripped his rotator cuff,” which resulted in surgery but no subsequent treatment. A post work accident MRI also revealed degenerative arthritis in the right shoulder. The sole medical testimony from the authorized doctor showed that 55% of the need for the current right shoulder surgery was assigned to the workplace injury, 25% to the prior injury, and 20% to degenerative changes. The JCC found the E/C responsible for 55% of the proposed surgery, and on that basis awarded prevailing party costs to the E/C.

The DCA affirmed the 25% portion of the Order, but reversed as to the 20% assigned to degenerative findings, finding no evidence to support the position that those findings were exacerbated/aggravated by the compensable injury. Specific medical testimony or proof is required in this regard. The DCA rejected the claimant’s constitutional argument that apportionment violates the claimant’s right to access to court, noting there was no evidence as to whether the doctor would not perform the surgery at an apportioned charge, or whether the 45% assessment would represent a *hindrance to recovery*. Based upon their holding, they remanded the issue of prevailing party costs to the JCC. [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	954-580-1500	239-939-2002