



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

District Court of Appeal Cases

Rios v. Gymboree/Gallagher Bassett,
Expert Medical Advisors/JCC Discretion

(Fla. 1st DCA 10/20/15)

The DCA rejected the claimant's challenge to the JCC's appointment of an EMA. The claimant argued the EMA appointment was improper as it occurred only eight days prior to the merit hearing. However, the DCA noted that there was no contest as to the existence of a disagreement between health care providers, and the JCC acted properly in appointing the EMA. The DCA also shot down the claimant's argument that appointing the EMA violated the 210 day rule for holding hearings found in F.S. s. 440.25(4)(d). That argument was not timely challenged by the claimant, and further JCCs have the discretion to extend that time limit for good cause shown. [Click here to view Opinion](#)

Zavala v. Econ. Dev. Comm'n of Mid-Florida, Inc
Non Final Orders

(Fla. 1st DCA 10/15/2015)

The DCA affirmed the JCC's rulings on compensability and denial of indemnity benefits. They declined to rule on claimant's constitutional challenge to subsection 445.009(11), which deems a participant in an adult or youth work activity under chapter 445 to be "an employee of the state for purposes of workers' compensation coverage", as the JCC's order reserved on issues (other than compensability) and was thus non-final in that respect. https://edca.1dca.org/DCADocs/2014/4617/144617_DC05_10152015_103307_i.pdf **Babahmetovic v.**

Bill Rogner

The original 5/1/15 opinion in this case created a very poorly conceived rule that an E/C who provided any benefit prior to issuing a 120 day letter was estopped from denying compensability. Bill Rogner immediately filed a Motion for Rehearing and Rehearing En Banc of that opinion. Thankfully, the DCA granted the Motion and withdrew that opinion in its entirety. The revised ruling omits all discussion of the 120 day rule. It holds merely that the JCC erred in denying the claimant's request for a one time change where the carrier authorized treatment for his initial injury (lumbar sprain), even though that doctor opined the sprain was less than 50% of the need for treatment, when combined with degenerative conditions. [Click here to view Opinion](#)

Matheny v. Indian River Fire/Rescue/Johns Eastern Co.,
Jurisdiction of DCA/Timeliness of Filing Petition for Certiorari

(Fla. 1st DCA 10/2/2015)

Bill Rogner

The DCA dismissed claimant's Petition for Writ of Certiorari, which was untimely under the Appellate Rules. Rule 9.100(c) requires the petition to be filed within thirty days after the rendition of the order to be reviewed. The court was without jurisdiction as the Petition was filed on the 31st day. The claimant argued that Florida Rule of Judicial Administration 2.514(b) provides an additional 5 days for mailing. However, this rule only applies when another rule, court order or statute requires a party to act within a specified time after service. The Appellate rule governs rendition of the order versus service, and renders the Judicial Administration Rule inapplicable. In addition to dismissing based upon a lack of jurisdiction, the court denied the alternative relief requested to consolidate this case with another similar case. [Click here to view Opinion](#)

Bedwell v. Stone Container Corp/Broadspire,
Compelling IMEs/Element of a Petition for Certiorari

(Fla. 1st DCA 9/30/2015)

Bill Rogner

The DCA denied the claimant's Petition for Certiorari related to the JCC's Order compelling her to attend the E/C's IME. Under the controlling law for her 1987 date of accident the JCC has broad discretion to compel such an examination. The court also addressed the claimant's second point of law asserting the JCC departed from the essential requirements of the law because her entitlement to benefits is (if accepted as true) essentially assured. The opinion notes that the merit of an untried medical issue is irrelevant to the issue of whether the JCC departed from the essential requirements of the law. [Click here to view Opinion](#)

**Edmond v. Avis Budge Group, Inc./CNA Claim Plus,
Attorney Fees/"Fees on Fees"**

(Fla. 1st DCA 10/2/2015)

The First DCA has entered a number of recent opinions on post 7/1/09 statutory fees noting that they contain the same certified question as Castellanos, and thus must await that decision. This case also concerned a question of whether the claimant attorney was entitled to fees for efforts necessary to establish entitlement to a fee ("fees on fees"). However, the DCA reversed and remanded on that issue as the JCC failed to expressly rule in that regard. [Click here to view Opinion](#)

**Sierra v. Metropolitan Protective Services/ Guarantee Insurance,
Waiver under F.S. s 440.20(4)**

(Fla. 1st DCA 9/30/2015)

The claimant appealed (1) a fee issue, (the DCA instructed the JCC to specifically exclude any fees for benefits obtained at mediation), (2) a Daubert issue (no abuse of discretion), and (3) a waiver issue under the 120 day rule. The claimant argued the E/C waived their right to contest compensability of the claimant's PTSD, as they apparently had continued to authorize treatment for that condition well past 120 day from the first provision of treatment for the PTSD. The court noted the JCC did not make any findings of fact or conclusions of law relative to the elements of (1) the first date the E/C provided psych benefits, (2) the identity of the specific psych injury for which benefits were provided, and (3) whether the denial of the psych injury occurred within the applicable 120 day period. On remand, the JCC is to consider the above factors. Their discussion of F.S. 440.20(4) suggests evidence of a "break" in causation cannot be supported by an argument that (if waiver exists) there never was a compensable injury to begin with. [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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