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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

City of Palm Beach/FIMT/Fla. League of Cities v. Zakian, **(Fla. 1st DCA 10/19/16)**
Medical Bills

The DCA's brief opinion indicates that all issues were affirmed, and that Appellee conceded the third issue that the JCC erred in awarding "payment of medical bills attached to the petition for benefits . . . subject to the workers' compensation fee schedule." In cases where the carrier agrees they authorized the treatment in the subject bills (presumably the case here), the JCC has no jurisdiction to award payment of those bills. **Click here to view Opinion**

Quinn v. CP Franchising LLC/Cruiseplanners, Inc./Zenith Insurance Co.,
Compensability/Going and Coming Rule/Exceptions **(Fla. 1st DCA 10/13/2016)**

Claimant appealed the JCC's finding that her fall in a parking lot next to her employer's leased place of business was not compensable. The DCA affirmed, finding the going and coming rule applied, and none of the three recognized exceptions existed. Injuries going and coming to and from work are generally not compensable. Exceptions exist for (1) a "special hazard;" (2) travel between two parts of an employer's premises, or (3) the area where the injury occurred is used by the employer for the employer's purpose. The JCC reviewed the evidence, showing that the groove in the parking lot where the claimant fell was uniform between the concrete and asphalt, and no hazards (potholes/debris etc.) were described. As no special hazard existed, the DCA analyzed the JCC's review of the issue of the employer's control of the area. They noted the evidence showed the employer did not lease the

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premises, there were no assigned parking spaces (rather an allotment of 32 spaces for non-exclusive use), and although there was a fee for maintenance, no control over the area was shown. Similarly, no evidence showed that a "special use" existed. They found the case to be supported by Bill Rogner's 2016 Evans v. Holland and Knight case. (*holding that parking lot neither owned, maintained, nor controlled by the employer is not part of the employer's premises for purposes of workers' compensation).* **Click here to view Opinion**

City of Dania Beach/PGCS v. Zipoli, **(Fla. 1st DCA 10/10/2016)**
Statute of Limitations/Elements of Estoppel

The DCA reversed the JCC's finding of estoppel which barred the E/C's SOL defense. Originally injured on 1/16/09, the E/C notified the claimant that he had attained overall MMI, was due IB benefits, and that his claim was subject to the one year SOL for medical benefits. The parties stipulated to MMI on 7/28/09 with a 7% PIR. The E/C stipulated they made one late IB payment and never paid P and I on the late payment. The last IB payment was 11/3/09. The claimant last obtained treatment with his authorized doctor May of 2010. At a later, unspecified date, the claimant called the doctor's office and was told his claim was closed and no further care would be provided. On 12/22/14, the claimant filed a PFB for medical care and payment of IBs at the correct rate as well as PICA. The E/C timely asserted SOL. The claimant asserted the E/C should not be allowed to assert that defense, arguing that there was a late IB payment, the IBs were paid at the wrong rate, that the 9/09 E/C letter misstated the SOL and that the doctor's office had misled the claimant as to continued authorization. The DCA found the JCC erred in applying estoppel, which requires (1) the E/C misrepresented a material fact; (2) Appellant relied on the misrepresentation; and (3) Appellant changed her position to her detriment because of the misrepresentation. The DCA also found that the JCC construed too broadly their 2010 Gauthier case, in which detrimental reliance by the claimant on the E/C's failure to pay IBs was shown. The DCA found that the claimant admitted he received the "initial brochure" advising him of his rights, and that reliance on the statements of the doctor's office as to the viability of the claim could not translate into a statement by the E/C upon which the claimant relied. In Gauthier, payment of the impairment benefits would have tolled the statute of limitations defense. Therefore, the absence of the filing of a PFB by the claimant was due to the E/C's failure to acquire MMI and PIR information, failure to file appropriate DWC forms, and failure to convey accurate information concerning claimant's PIR or to initiate IB payments to claimant – which the E/C was on actual notice were due pursuant to the serious and permanent nature of her injuries. Here the DCA found no record evidence of the E/C's knowledge of the doctor's office's discussion with the claimant. Rather the E/C acquired the MMI and PIR, filed the appropriate forms documenting the assignment and change of medical status, sent a letter to the claimant advising of entitlement to IBs, and initiated payment of the IBs. Finding the facts here did not satisfy estoppel or the "unique set of facts substantially similar to the facts of Gauthier," the DCA found the SOL barred further benefits. **Click here to view Opinion**

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Cruz-Ramirez v. American Airlines/Sedgwick, **(Fla. 1st DCA 10/4/2016)**
Attorney Fee liens/Entitlement/Benefits Secured

Claimant sustained separate compensable injuries in 2009. Claimant's first attorney filed PFBs in 2010 and 2011, however no fee entitlement existed for either as all benefits were timely provided. The claimant's second attorney filed a NOA on 2/1/12, and a PFB seeking mileage on 2/10/12. Ultimately it was determined that the E/C did not pay the mileage within 30 days of the PFB. The JCC noted that both attorneys were "of record" as of the date of the filing of the PFB for mileage, as the Order approving the first attorney's lien was not entered until 2/27/12. The DCA reversed, however, noting that the motion of the first attorney represented that it was effective 1/30/12, and that he would have no further responsibility on the file after that date. A partial dissent noted that there was no evidence presented that the second attorney was entitled to the entire $1500 fee once the first attorney's payment was stricken. The E/C stipulated to paying the $1500 fee and the first attorney did not participate in the appeal. **Click here to view Opinion**

Kilyn Construction Inc./FRSA SIF v. Pierce, **(Fla. 1st DCA 10/4/2016)**
Provision of Housing/Transportation/Res Judicata/Reasonableness

Claimant's 2012 accident resulted in paralysis from the waist down. Prior litigation established the E/C's responsibility to provide a handicap accessible apartment (less pre-injury housing costs) and a handicap accessible van. Time passed, and the claimant had to leave the apartment and procure a new van, without the E/C's assistance according to the record. The claimant subsequently filed PFBs seeking payment of $17,250 to cover the first six month's costs ($3500/mo minus $3750 costs of pre-accident apartment) of a four BR house on four acres near the water. The E/C asserted res judicata, as the claimant lost at a prior merit hearing seeking an upgrade to a three BR apartment. A second PFB sought $4,464 for van insurance, which the carrier asserted was too high (although they would pay at least $800 for insurance). The JCC awarded the requested benefits, relying heavily on the carrier's alleged inaction and finding the claimant acted reasonably. However the DCA noted that such a failure by the E/C does not render claimant's alternatives reasonable or necessary. The DCA rejected the E/C's allegation that res judicata applied to the housing issue, as the required elements of (1) the cause of action being the same, and (2) the facts and evidence needed to determine the issue were absent. They noted new facts precluded such a finding. However, they reversed and remanded on both issues as the evidence was insufficient to show that the claimant's proposals were reasonable or necessary.
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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