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

Case Law Update

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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 Court of Appeals

Payne v. J.B. Hunt Transport, 11th Circuit Court of Appeals, (10/4/17)(Unpublished Opinion)
Workers' Compensation Immunity

The 11th Circuit affirmed the District Court's grant of Summary Judgment for the Employer. The claimant drove for the defendant and suffered from diabetes, gout and rheumatoid arthritis. He developed blisters which he attributed to "unsafe work conditions and damp work boots". He claimed his employer was indifferent to his complaints, and ultimately his left big toe was amputated. The adjuster denied his claim for WC benefits, asserting (1) no notice within 30 days and (2) work is not the MCC of his injuries or disability. His PFB several months later sought indemnity and medical, as well as "compensability of the entire claim". The response stated "this is a totally denied claim, therefore no medical or indemnity will be paid. Payne withdrew the PFB prior to adjudication and sued the employer in tort. The employer asserted immunity, and Payne responded they were estopped from asserting that defense. The basis of the estoppel argument was that the carrier had not accepted compensability, and that the adjuster testified that "compensability means there was an accident in the course and scope…" and that he did not have an accident on the job. The District court found that immunity applied and granted summary judgment, noting that the denial was "…consistent as opposed to irreconcilable" with being in injured in the course and scope. The 11th Circuit noted that immunity may not apply where the E/C asserts the injury did not occur in the course and scope of employment, but estoppel requires (1) representation of a material fact, which is contrary to the "condition of affairs" later asserted by the party making the representation, (2) reliance upon the representation by the other party and (3) a change in the position of the party that relied on the representation to their detriment. Prior case law has held that if the denial gives rise to more than one interpretation, and it can't be determined whether the employer's position is inconsistent, summary judgment (on the issue of immunity) is inappropriate. The Court held that the employer's denials and statements were not ambiguous, nor did they state that Payne was not in the course and scope. Payne also testified he knew

the denial had something to do with his diabetic state. The court distinguished denial language in Gil v. Tenet Health Systems (which frankly is not materially different), and noted that Payne could not create sufficient ambiguity to survive summary judgment. **Click here to view Order**

District Court of Appeal Cases

City of Tavares/Gallagher Bassett v. Harper, ___ So. 3d ___ (Fla. 1st DCA 10/24/17)
Firefighter Presumption/Evidence of Successful Completion of a Pre-employment Physical

The JCC awarded compensability of the claimant's hypertension under the presumption contained in F.S.s. 112.18(1). Following two high blood pressure readings which were effectively controlled with medication in 2016, the claimant sought compensability of his hypertension under the presumption. The claimant's pre-employment physical in 2007 contained a blood pressure reading of 140/60. The E/C argued that the language of the statute allows a claimant to use the presumption only if the evidence shows he passed a pre-employment physical which "failed to reveal any evidence of such condition". The evidence showed that although the reading in 2007 was characterized as "high" there was no mention of hypertension and the blood pressure was characterized as "normal". The evidence further showed from 2001 to 2015 there were no other instances of high blood pressure readings. The expert medical testimony discussed an increased reading could be caused by other factors besides hypertension, including "white coat syndrome" (a transient increase in blood pressure due to the stress/anxiety of undergoing a blood pressure reading). It also discussed that 2-3 readings would be required to confirm a condition of hypertension. The JCC and DCA rejected the E/C's argument that "any evidence of such condition" includes the high reading noted in the pre-employment physical. The DCA noted that false positive reading could also qualify as "any evidence" and that the argument ignores the second portion of the statute's requirement that the evidence relate to such condition, which they noted should pertain to the facts of the particular case. They analogized their ruling to the 2008 Talpesh case, which held a high blood pressure reading in a pre-employment physical was not sufficient to remove the presumption of coronary artery diseases, because the physical exam did not reveal the specific listed condition of heart disease. The dissent noted the majority confused "weight" versus "admissibility" of evidence, and that the opinion inserts a requirement not appearing in the statute that the pre-employment physical must include a diagnosis of the listed condition. **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.