



Case Law Update

September 16, 2016

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.

No new DCA decisions since 9-12-16 newsletter

District Court of Appeal Cases

Great Cleaning Corp./Ascendant v. Bello,
Average Weekly Wage/Calculation of Wages

(Fla. 1st DCA 9/6/2016)

The DCA reversed the JCC's determination of the claimant's AWW, finding that F.S. s 440.14(1)(a) applied. Claimant worked part time for the employer, but transitioned to full time in the 21 days prior to her work place accident. The E/C argued her AWW should be established per subsection (1)(a) by adding up her wages in the 13 week period and dividing by 13 (\$251.96). The claimant argued at trial that her AWW should be calculated based only upon her full time work from 4/10/15 through her 5/6/15 DOA. The JCC agreed with the claimant, calculated that amount at \$653.83, but awarded an AWW of \$577.50 as that was the highest amount claimant sought. The DCA found the JCC erred, noting that while the pre-2003 section of the statute required "90% of the customary full time hours", the legislature amended the applicable 2003 statute to require only 75% of the customary hours, without the full time modifier. The DCA determined the mandatory "shall" language of subsection (a) and the Supreme Court's 1998 Campbell holding mandated reversal and remand.

https://edca.1dca.org/DCADocs/2015/5776/155776_DC13_09062016_065014_i.pdf

-more-

Souza v. Truly Nolen/Crawford and Co
Attorney Fees/Jurisdiction of JCC

(Fla. 1st DCA 9/9/16)

The DCA reversed the JCC's Order requiring claimant's counsel to file a Verified Petition for Attorney Fees. In 2008, the JCC found claimant settled all claims and dismissed all PFBs. Claimant appealed and during the pendency of the appeal dismissed a claim for attorney fees, not reserving on any issue. The DCA affirmed the JCC's finding that a settlement occurred. In 2015, the E/C filed a Motion to Dismiss "pursuant to W.C. Rule 60Q-6.124(3)(5)." The JCC ordered the claimant attorney to file a Verified Petition. The DCA analyzed the rule and law governing the Order. As all claims, including claims for attorney fees and costs had been waived/dismissed by the claimant, the JCC lacked jurisdiction to order that the Verified Petition be filed.

https://edca.1dca.org/DCADocs/2016/0118/160118_DC13_09092016_061059_i.pdf

Salzman v. Reyes
Attorney Fee Liens/Quantum Meruit

(Fla. 1st DCA 8/18/2016)

Claimant's prior attorney represented the claimant under a contract of representation for approximately a year. After he obtained a settlement offer of \$25,100, he was discharged by the claimant. The successor attorney obtained a settlement offer of \$39,150, which the claimant accepted. The successor attorney presented a motion for attorney fees relative to the settlement, and the prior attorney filed a Petition for a *Quantum Meruit* (QM) fee. The claimant agreed that the prior attorney properly filed a lien, agreed to entitlement to a QM fee, and that the amount (\$1,375) was reasonable. The JCC, however, denied the former claimant attorney's fee, noting he did not show why he was discharged or what benefit he obtained for the claimant. The DCA found the JCC abused her discretion in ignoring the parties' stipulation as to entitlement and amount, absent a finding that the prior attorney failed to present sufficient evidence to establish a stipulated fact. A prior attorney in WC is entitled to a reasonable QM fee when there is a valid contract of representation, and following discharge the contingency (obtaining benefits) occurs. [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	954-794-6933	239-939-2002