



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.

No new DCA decisions since 9/6/17 newsletter

District Court of Appeal Cases

Utopia Home Care/Guarantee Ins. v. Alvarez, (Fla. 1st DCA 9/5/2017)
Indemnity Benefits from Psychiatric Injury Following Date of Physical MMI

The DCA reversed the JCC's award of indemnity based upon a compensable psychiatric condition, finding the award violated F.S. s 440.093 and prior case law. The claimant was placed at MMI following surgery for a compensable shoulder condition in January of 2012 and paid IBs at a 2% PIR. After continued complaints, the E/C received a request to authorize revision surgery, pending a psychiatric evaluation. The E/C subsequently accepted the psychiatric condition as compensable, provided psychiatric care, and authorized the surgery. The claimant was again placed at physical MMI in July of 2013. Two years later the claimant sought indemnity based upon her psychiatric condition. The JCC awarded three months of indemnity from the date of the EMA's testimony, referencing F.S. s 440.093's six month limit on indemnity post physical MMI from the claimant's injury or injuries. The DCA analyzed whether the statute's limit to six months is a "bank", awardable at any time after physical MMI, or a calendar based limitation expiring exactly six months after the date of MMI. The 2015 School Board of Lee County v. Huben case rejected the "bank" theory. The opinion noted that the Huben claimant's receipt of only six days of psychiatric indemnity (the amount of time left when she received a medical opinion on psych MCC) prior to the expiration of the six months may seem unfair in the abstract. However, they also found the legislature clearly intended such a limitation, and found it to be permissible as an exception to the limited role of compensable psychiatric conditions. Further, they held the limitation had support in logic, was not facially unreasonable and was not inconsistent with other prior cases.

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Applying the above the DCA held that while the JCC correctly applied a calendar-based start date for post-physical MMI temporary mental-health disability benefits (and ruled they were subject to the six month limit), he erred by commencing that period on the date of the EMA's deposition, over four years after Claimant reached initial physical MMI, or two years after the second MMI date. They also found the JCC erred to the extent he intended to treat the six-month period as a bank of time that could be "doled out" over an extended period after Claimant reached physical MMI. The DCA found the claimant's constitutional arguments against the six month limitation were premature, as the JCC awarded only three months of psychiatric indemnity. [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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