



Case Law Update

September, 2018

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.

District Court of Appeal Cases

Employbridge/Gallagher Bassett v. Rodriguez,

(Fla. 1st DCA 2018)

Temporary Partial Disability/Disqualification due to justifiable refusal of suitable employment

The DCA reversed the JCC's Order awarding TP benefits, finding the record did not support the conclusion the claimant's refusal of suitable employment was justified. That relatively brief holding was punctuated by two separate concurring opinions, and one dissenting opinion, providing additional facts and analysis. Central to the issues was the E/C's eventual offer of a light duty job in Tampa versus the initial job site in Largo, and the claimant's reasons for failing to attempt the offered position. Judge Thomas agreed to reverse the Order, but would have accepted the E/C's reasoning that a refusal of suitable employment must bear a "plausible nexus", as was discussed in the 2012 HRMCW DCA opinion Delta Airlines ESIS v. Kuhn (*JCC's discretion to award statutory advance must consider a plausible nexus to interests of financial needs arising from workplace injury*). Once the E/C met its burden to show it offered suitable light duty work under F.S. s. 440.15(6), the concurrence argued there is even more of a reason to require a plausible nexus, and such would properly limit the jurisdiction of the JCC and incentivize the claimant to return to work. Judge Osterhaus' concurrence disagreed with the "nexus" approach, and focused on the reasons why refusal may or may not be reasonably justifiable, disapproving of "self-imposed" limitations on the ability to commute to and from a suitable job offer, whether "pain" involved in the commute, and whether an ability to speak Spanish only in Florida could constitute sufficient evidence under this analysis. Finally, Judge Bilbrey dissented, noting sufficient evidence existed to support the JCC's decision. The dissent felt that a causal nexus requirement would reduce the discretion of the JCC to consider evidence, that JCC's should be allowed to determine reasonableness, and any additional requirements should be imposed by the legislature.

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