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CASE NOTES
CASE LAW SUMMARY
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Modification of Orders-Statutory Standard

AMS Staff Leasing, Inc./Brite Top Roofing et al. v. Giraldo, (Fla.1st DCA 1/24/12)

In September of 2008, the JCC awarded the claimant TPD benefits, but reduced that award based on wages paid in lieu of compensation by the employer for a four month period of \$500 per week. That Order was affirmed without opinion in 2009. At a hearing in 2011, the claimant sought to modify the prior Order, alleging that the JCC “overlooked” employer testimony in the 2008 proceeding that the claimant never received the checks issued by the employer. The JCC granted claimant’s motion, and ordered TPD to be paid without the previously awarded credit. The DCA reversed this finding, noting that modification of a prior Order under F.S. 440.28(2006) must not only be based upon a “change in condition or... a mistake in determination of fact”, but also that such a mistake could not have been discovered at the time of the original proceeding and entry of the original order. Here, although the JCC apparently did overlook the evidence presented initially, both parties were aware the claimant failed to pick up the checks issued by the employer at the original trial, and claimant’s proper remedy was to file a Motion for Rehearing. [Click here to view Order](#)

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EMA Standard/Repetitive Trauma/MCC

Federal Express Corp./Sedgwick CMS v. Lupo, (Fla.1st DCA 1/24/2012)

The DCA reversed the JCC's Order in part, which awarded compensability and continuing medical care, finding the JCC improperly rejected the EMA's opinion regarding ongoing MCC of the claimant's ankle complaints. The claimant fractured his right ankle in 1987 and began working for the employer as a driver two years later. In 2001 he sought treatment for right ankle complaints, and received a referral to a podiatrist in 2003. After filing a PFB for compensability and authorization of the podiatrist, the parties eventually presented those questions to an EMA. The JCC found the EMA testified the claimant aggravated his pre-existing ankle condition, and that the IA was the MCC of the need for ongoing treatment. The DCA reversed and remanded, noting that the JCC improperly rejected the EMA's opinion that the MCC for ongoing treatment was NOT the IA. The court failed to find the requisite clear and convincing evidence to do so in the records. The Court disagreed with the JCC's assessment that the EMA was confused on this issue of ongoing treatment, noting she clearly stated her opinion. The DCA rejected the JCC's reliance on Delgado, noting in that case the evidence supported only a finding that the employment aggravated an underlying condition. The DCA found Delgado did not allow the JCC to reject the EMA's testimony that the MCC of the need for ongoing care for the right ankle complaints was the pre-existing condition. [Click here to view Order](#)

Temporary Indemnity/Period to Timely Pay Penalties and Interest

Perry v. Ecolab, Inc./Broadspire, (Fla.1st DCA 1/13/12)

The DCA reversed a denial of penalties and interest, holding the JCC erred in determining when such payments are due following rendition of an Order. The JCC awarded PTD benefits in an Order dated November 5th, 2010. The carrier paid the past due penalties and interest on November 24th, 2010, and the past due PTD benefits two days later. Although F.S. § 440.20(7)(2002) indicates payments per an award are "due" within seven days after the Order is sent to the respective parties, the JCC improperly considered the time period in which an Order becomes "final" (30 days, absent appeal within that time) in finding no penalties and interest due for late payment. As the carrier issued payment past the period when they became due, the court remanded for entry of an order awarding penalties and interest, and any attendant additional costs and attorney fees. [Click here to view Order](#)