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CASE NOTES

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CASE LAW SUMMARIES: July, 2005

120 DAY RULE

City of Opa Locka/Unisource v. Williams, 30 FLW D1652, (Fl. 1st DCA July 5, 2005) The JCC ruled the E/C waived their right to deny the claim. The 1st DCA reversed, finding that the E/C did not invoke the "pay and investigate" provision of 44.20(4), and that any failure to respond to the PFB is not a waiver, but rather a denial to each and every allegation in the PFB. They indicated the sanction imposed by the judge was too extreme in this instance. The 1st DCA further found the E/C timely amended the pre-trial pursuant to the DOAH Rules.

Cole v. Fairfield Communities/RSKCO,— So.2d – (Fla. 1st DCA July 20, 2005) The 1st DCA affirmed the JCC's denial of benefits, finding that the E/C's single mistaken payment to a chiropractor did not trigger the 120 day "pay and investigate" provision.

The carrier accepted the claimant's 6/30/02 accident as compensable and provided medical treatment for her knees, right ankle and shoulder. Six years prior to the industrial accident and afterwards, the claimant treated with a chiropractor for neck pain. The chiropractor concluded her treatment following the industrial accident was related and began sending bills to the carrier on 2/6/03, the same day the claimant filed a PFB. Before filing a denial of the PFB, the carrier made a single payment to the chiropractor for a 3/03 visit.

In rejecting claimant's arguments that the payment triggered the 120 day rule, the JCC noted that the claimant told the chiropractor she felt her neck pain was related, that the carrier had never accepted the neck condition as compensable, that the payment was made erroneously by someone other than the adjuster and that the adjuster had personally informed the chiropractor she was not authorized. The parties had also stipulated that the chiropractor was the claimant's IME physician.

Boyett v. Wal-Mart/Integrated Administrators,–So.2d–,(Fla. 1st DCA July 21, 2005) Claimant, who had pre-existing COPD and heart ailments, fell to the floor at work on 3/2/2003. Claimant allegedly told a co-

employee at the time that the fall was caused by his prior conditions and was not the result of moving toolboxes. Claimant went on his own to the ER, and nothing in those records suggested a lifting event at work or the existence of a hernia. The diagnosis was pneumonia. Several weeks later, claimant requested authorized medical treatment, which was provided on March 18.

Based on the claimant's report, the authorized doctor related an abdominal strain to the incident (without seeing the ER records).

Claimant filed a PFB on 6/23/2003 seeking indemnity and authorization for hernia surgery. A second PFB was filed on 10/8/03 seeking treatment for his COPD, as the surgeon indicated he would not operate without pulmonaryt clearance. The carrier filed a denial of the second PFB on 10/9/03, but did not file a denial on the first PFB until 1/22/04, more than 300 days after the first provision of benefits. This denial was filed after the initial authorized doctor changed his opinion on causation after seeing the ER notes.

The 1st DCA held the carrier could not deny the claim, as more than 120 days had passed since the initial provision of benefits. They noted the carrier received the co-employees statement 11 days after the incident, where the claimant allegedly denied any workplace involvement. The record also showed the carrier knew within weeks of the incident that the claimant went to the ER, and they could have obtained those records. They ruled the carrier had sufficient information to deny compensability within the 120 day period but failed to do so.

FINAL ORDERS

RTG Furniture Corp./St. Paul Travelers v. Alford, 30 FLW D1652 (Fla. 1st DCA July 5, 2005) Claimant had separate compensable workplace injuries on 1/24/2000 (foot) and 8/10/2000 (back). Following a Merits Hearing on both claims, the JCC entered an Order finding claimant had reached MMI "For all of her injuries". Claimant filed a Motion for Rehearing, asking for clarification of the MMI issue. However, claimant did not appeal the Final Order of the JCC.

A year later, the claimant sought further temporary indemnity for her back injury. The JCC entered a new Order, finding that the prior Order's MMI date pertained only to her foot and psychiatric injuries.

The 1st DCA held that the JCC was without jurisdiction to amend or otherwise change the prior order that had not been appeal. They found that the original order was final for over a year, did not contain any limiting language, and was unambiguous. The claimant's motion for Rehearing did not toll or other wise preserve the court's jurisdiction. The second Order was vacated.

COURSE AND SCOPE OF EMPLOYMENT

Wilson v. Utd.Mfgrs.Supplies, Inc./AIG, 30 FLW D1709 (Fla. 1st DCA July 15, 2005 The 1st DCA reversed an Order denying compensability. The facts of this case were not discussed, but the court recited a long line of cases holding that a claimant is generally in the course and scope of employment when on the employer's premises, even though not technically "on the clock".

Whitehead v. Orange County Sheriff's Dept., 30 FLW D1709 (Fla. 1st DCA July 15, 2005) Claimant broke her wrist while playing softball with her supervisor and co-workers while she was "on-call". The court found that the claimant's participation in the game was a recreational activity, and not mandatory. In the dissent, it was argued that the facts supported the opposite result, citing a long list of cases that seemed to reach contradictory results. Those cases discuss the benefit the employer derives from the claimant's participation, especially as in this instance, where the claimant was paid her full pay and instructed to bring her beeper and cell phone to answer calls.

ATTENDANT CARE

Palm Beach County School Board/F.A. Richards v. Zabik, 30 FLW D1710 (Fla. 1st DCA July 18, 2005) The JCC awarded two hours of attendant care per week, specifically for "carrying groceries and laundry up three flights of stairs to her apartment". The 1st DCA found that this description did not comport with attendant care as described in F.S. 440.13(2)(a)-(b)(2000). The court found that such "quality of life activities" and "supportive services" might well be "indemnified under disability compensation benefits rather than attendant care that is not medically necessary. Cases cited by the plaintiff were applicable to earlier dates of accident, but not to the 2000 version of the statute which was controlling.

ATTORNEY FEES/MEDICAL BENEFITS

Mylock v. Champion International/Sedgewick Claims Mgmt., 30 FLW D1713 (Fla. 1st DCA July 18, 2005) The 1st DCA reversed the JCC's decision denying attorney fees. The E/C sent a letter to the claimant, informing him that they were transferring him from his authorized doctor to a "replacement doctor", after an IME had determined the claimant was not making appropriate progress. Claimant filed a PFB, and eight days later the E/C replied that it did not intend to de-authorize the current physician. Four days later the E/C filed a formal response, reciting its right to de-authorize the initial doctor, if the IME confirmed he was not making appropriate progress. Two weeks later at mediation, the E/C agreed to continue to authorize the first doctor. Claimant filed a petition for fees, which was denied.

The JCC found the communications from the E/C were at most an "intention", emphasizing that the E/C never told the first doctor he was not authorized. The 1st DCA found that to prevail on a medical only fee, the claimant may be awarded fees if he or she succeeds in causing the carrier to retract its intention to transfer care, regardless of the timing of the de-authorization.

CASE NOTES

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