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CASE NOTES
CASE LAW SUMMARY
July 2009

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Statutory Presumption/Disability Requirement

Jacksonville Sherriff's Office v. Shacklett, (Fla. 1st DCA July 29, 2009) The Employer appealed findings by JCC Dane that the claimant's "essential hypertension" was of a type covered under the statute, and (2) that he satisfied the "disability" requirement of the presumption statute. The DCA affirmed as to issue (1), finding that argument was not preserved. However, the DCA reversed as to the Appellant's second issue. The JCC had based his findings that the claimant was "disabled" on the fact that the claimant was told to refrain from work until appointments. The DCA noted that the recent Bivens holds that time missed for work for diagnostic testing is not "disability". Similarly, when the claimant was told by a walk in doctor to "refrain from work" until cleared by a cardiologist, this was not evidence of any disability specifically related to the claimant's hypertension. The court also noted that when the cardiologist saw the claimant three weeks later, he only made passing reference to hypertension, focusing mainly on whether the claimant had heart disease. [Click here to read case](#)

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Medical Benefits/Subjective Complaints/Compensability and Medical Necessity

Morrow v. Sam's Club/Sedgewick CMS, (Fla. 1st DCA 7/31/09) Claimant sustained a compensable injury. After several evaluations, the initial treater could not determine whether there was anything objectively wrong with the claimant. The physician and a nurse that treated the claimant recommended an orthopedic evaluation. The carrier denied the referral, taking the position that the referral was

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based on subjective complaints alone. The JCC denied the authorization, based upon the language in F.S. 440.09(1) stating that compensability cannot be based upon subjective complaints alone. The DCA reversed, finding that section only applies to compensability (i.e. whether the claimant sustained an initial compensable event). The DCA held the controlling statute for the referral was based upon F.S. s. 440.13(2)(a), which requires medical necessity. The court noted evidence in the record showed the initial injury was the MCC of the referral, and that it was medically necessary. The court indicated the carrier never contested medical necessity. [Click here to read case](#)

This and other prior cases indicate that asserting blanket defenses to initially compensable claims that future treatment "is not compensable" will create problems. Defenses need to assert that there is no longer any MCC for the requested treatment, and that the treatment sought is not medically necessary.

Attorney Fees/Preservation of Error

Chandler v. Centex Rooney/Zurich, (Fla.1st DCA 7/24/09) The First DCA affirmed an order of the trial court denying benefits, as well as denying an E/C misrepresentation defense. The only opinion is contained in Judge Thomas' special concurrence, where he addresses the potential entitlement to attorney fees for prevailing against an affirmative defense. Although attorney fees were pled at trial under F.S.440.34(3)(a)-(d)(2002)(*allowing fees when claimant (1) prevails on a PFB, (2) prevails on an issue of compensability where the E/C denies a compensable accident occurred, or (3) prevails in proceedings under F.S.§§ 440.24 or 440.28*), it was only at the Motion for Rehearing stage that the claimant sought fees under F.S §440.34(1) and (2)(2002). Judge Thomas noted those subsections allow for fees related to "services rendered" under the statute and the JCC's ability to award reasonable attorney fees for obtaining benefits. The Judge reasons that although entitlement to such fees in this case was waived, they could be available under the alternate provisions, where the benefits put at risk by the E/C affirmative defense were protected by the claimant attorney's successful efforts. [Click here to read case](#)

Medical Benefits/Timely Authorization

Dorsch, Inc./Federate Ins. v. Hunt, (Fla.1st DCA 7/24/09) The claimant in this case, first in a grievance, sought authorization of a psychiatrist. On two occasions, the E/C provided a list of three physicians. The appointment apparently did not occur quickly enough for the claimant, who then proceeded to treat on an unauthorized basis with Dr. Walker. JCC Hofstad interpreted the Butler Bay case as requiring an E/C to not only timely authorize a doctor, but also to timely schedule an appointment. The Court held the JCC erred in interpreting Butler Bay so broadly. The Court reversed the JCC's finding that Dr. Walker had been authorized by operation of law, and remanded for the JCC to determine the timeliness of the authorization issue, beginning from the grievance stage. [Click here to read case](#)

Ripeness of Issues

Booher v. Perkins/Zurich, (Fla. 1st DCA 7/8/09) The 1st DCA reversed and remanded an Order of JCC Spangler finding no MCC for a surgical procedure. The DCA held the JCC erred in ruling upon an issue that was not the subject of a PFB and that had not been mediated. [Click here to read case](#)

Enforcement of Settlement Agreement

Santana v. American Airlines/Specialty Risk, (Fla. 1st DCA 7/8/09) The 1st DCA reversed an Order of JCC Castiello which compelled the claimant to execute and submit settlement documents. The DCA held that such orders must be based on

record evidence of the terms of the agreement. As the JCC's Order was based on the unsworn allegations contained in the E/C's motion, the DCA held there was no CSE to affirm the Order. [Click here to read case](#)

Standards for Determining “good cause” for unemployment

Borakove v. Fl. Unemployment Appeals Commission, (Fla. 1st DCA 7/8/09) This UC case contains several case cites to the standards for determining good cause as it relates to UC benefits. As this analysis is employed in many temporary benefit WC cases, it may be helpful. The DCA in this case affirmed the UC commission's denial of benefits for this pro se claimant. He had attended training and one day of work at a Goodwill Center, leaving thereafter because he was “too stressed out”. The case enunciates a “reasonable person” standard with regard to maintaining employment. [Click here to read case](#)