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CASE NOTES
CASE LAW SUMMARY
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Compensability/Idiopathic Injuries/MCC

Caputo v. ABC Fine Wine & Spirits/Alternative Service Concepts, (Fla. 1st DCA 7/11/12)

The DCA reversed and remanded the JCC’s denial of compensability for injuries the claimant sustained after falling and hitting his head. The E/C denied compensability, stating the fall resulted either from a pre-existing or idiopathic condition. Claimant’s IME testified the impact with the floor caused claimant’s injuries, and there was no pre-existing condition. E/C’s expert testified similarly. The only evidence of any similar event (but not condition) was a fall in the shower two years previous that resulted in a 10 second loss of consciousness and concussion. The JCC’s order denied compensability, finding no evidence to support that the work performed caused the fall. The JCC specifically rejected the E/C’s defense that a pre-existing injury predisposed him to fall, but found it was idiopathic and not caused by employment. The DCA analyzed the “arising out of” and “course and scope” elements of compensability. Arising out of requires that (1) the work performed must be in the course and scope, and (2) the work must be the MCC of the accident or injury. Where there is only one cause of the injuries, claimant is not required to present evidence that the work accident was the MCC of his injuries, citing Lanham v. Dept. of Environmental Protection. The DCA noted this case presented no evidence of competing causes, rather the undisputed evidence showed that the impact with the floor caused the head injuries. As such, the

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claimant did not have the burden to produce evidence of MCC. The court also disagreed with the JCC's interpretation of prior case law discussing pre-existing conditions, stating that in the absence of pre-existing condition/other causes, claimant can prove sufficient causation by showing he was performing work duties at the time of the accident. [Click here to view Order](#)

Penalties and Interest/Presumption/Standard of Proof

Pupo v. City of Hialeah/Sedgwick CMS, (Fla.1st DCA 7/9/12)

The DCA affirmed the JCC's denial of penalties on late paid indemnity benefits, but reversed the denial of interest. The DCA found the JCC properly analyzed the penalty issue, particularly the section of the statute that requires inquiry into whether such nonpayment results "*from conditions over which the employer or carrier had no control*". The record supported the JCC's finding of fact that the E/C established entitlement to the presumption by proving the ordinary course of business was followed regarding issuance (and mailing) of checks. Specifically, the adjuster testified the checks were sent "regular mail" and she does not "see the checks before they go out" but "it all goes through finance". They further found that the payout ledger confirmed that hundreds of payments, undisputedly received by Claimant, were made the same way. This evidence was sufficient to permit the JCC to infer that the E/C followed the normal course of business regarding mailing. The claimant failed to rebut this presumption. The DCA reversed as to the denial of interest however, noting the interest portion of the statute does not contain the same presumption as the penalty provision. The DCA wrote specially that interest is always due if payment is late, unless neither the employer carrier could have prevented the un-timeliness. They rejected as "mere dicta" the JCC's citation to language in Corkery v. Best Wings of Cape Coral which suggests untimely interest payments may be subject to the penalty section's "good cause" analysis. The DCA remanded for the JCC to determine attorney fees and costs due on the interest awarded.

[Click here to view Order](#)

Evidence (Hearsay and Authentication) & Causation

Tutor Time Child Care/Learning Centers & Gallagher Bassett v. Patterson, (Fla.1st DCA 7/3/12)

The E/C alleged the JCC committed error on four grounds. The DCA affirmed the JCC on all four points, but wrote about two issues. The E/C alleged the JCC should not have considered F.S.440.29(4)(2008)(allowing the parties to submit records of authorized treating doctors into evidence at least 30 days prior to trial) as satisfying both hearsay and authentication issues for such records. The DCA noted that the legislature passed this section into law in 1993 to allow WC litigation to be more streamlined, allowing the parties the opportunity to "admit" the records via motion eliminates the need to depose a records custodian. The DCA felt that accepting the E/C argument that the statute cured only hearsay but not authentication would render the statute meaningless. They noted the statute's 30 day period allows either side to determine whether there is a bona fide argument that the documents are not "authentic", which was not the case here. The DCA also found the JCC properly held the claimant did not have to show whether her second injury broke the causal chain between the earlier injury at issue. Both injuries were to the same body part, with the same employer and carrier. The DCA repeated that under

Byszynski, MCC does not apply where the only contributing causes to the injury were occupational in nature. [Click here to view Order](#)

Attorney Fees (2007 DOA)

Pineda v. Rio Pinar Health Care Center/ESIS, (Fla. 1st DCA 7/3/2012)

The claimant alleged the JCC erred in awarding an attorney fee under the 2007 version of F.S. 440.34(1). The claimant sought a statutory guideline fee of \$45,608.94. The court noted the JCC properly followed the instruction found in Murray v. Mariner Health and relied on the Lee Engineering factors in arriving at the reasonable fee of \$25,000. [Click here to view Order](#)