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CASE NOTES
CASE LAW SUMMARY
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If you have any questions regarding Case Law Summaries, please contact W. Rogers Turner, Jr. : rturner@hrmcw.com

Mobile Medical Industries v. Quinn, 2008 WL 2228706 (Fla. App. 1 Dist. June 2, 2008)

Claimant injured her back in 2002. The treating neurosurgeon placed her at MMI with a 20% rating in 2004. The e/c began paying benefits but obtained an IME to address this issue. The claimant then sought an advance of impairment benefits. The JCC ordered an advance of impairment benefits in the amount of $7500. An EMA was appointed and opined that the claimant had a zero percent impairment. A hearing was conducted and the JCC found that the claimant was entitled to the 20% rating, based on the principle of estoppel, finding the E/C misrepresented a material fact by accepting the 20% rating, beginning payment of the IB's based on that percentage, and not telling the claimant that it was a provisional acceptance.

The First DCA reversed and remanded, finding that the elements of estoppel were not satisfied. The E/C did not receive the conflicting opinions on the permanent impairment attributable to the accident until after the report of the original doctor who issued the 20% rating. Additionally, at the time the claimant sought the advance, the claimant was made aware of the E/C's disagreement with the 20% rating. Based on these facts, the DCA found that the E/C did not misrepresent its position and, without evidence of a factual misrepresentation, there was no estoppel.

Marion County v. Futch, 983 So.2d 689 (Fla. App. 1 Dist. June 5, 2008)
The claimant alleged an injury while responding to a house fire. He felt chest pain but filed no formal notice until more than 30 days had passed, when he filed two petitions. The JCC ruled in favor of the claimant that timely notice was provided. The First DCA ruled there was no record evidence in this case that either supervisor present at the scene witnessed the claimant's accident, and thus there was no actual knowledge. Further, it was established that the claimant did not report his injury to anyone during the 30-day reporting period. Lastly, the DCA noted that the JCC erred in finding that the claimant's "truthfulness" was an "exceptional circumstance" which would have prevented the claimant from timely filing an accident report.

Branham v. TMG Staffing Services, 2008 WL 243414 (Fla. App. 1 Dist. June 18 2008)
The First DCA reversed the JCC's denial of benefits based on the statue of limitations. The DCA noted that the JCC applied the wrong legal standard to the claimant's argument that the employer was estopped form asserting the statue of limitations defense. The JCC found that the claimant presented no competent, substantial evidence that he did not receive notice of the applicable statute of limitations. The JCC did not determine whether the claimant showed by a preponderance of the evidence that he did not receive information regarding the statute of limitations. The First DCA therefore reversed and remanded to the JCC to apply the correct legal standard.

Matrix Employee Leasing v. Pierce, 2008 WL 2434136 (Fla. App. 1 Dist. June 18, 2008)
The First DCA reversed the JCC's finding that the claimant's chronic obstructive pulmonary disease compensable. The JCC found that the 2004 evidentiary threshold of clear and convincing evidence was supported in this case because there was no competent medical testimony that the claimant's exposure levels were insufficient. The DCA ruled that the JCC erred by implying in the order that the E/C was required to produce evidence disproving the claim because the burden of proof of causation is wholly the claimant's. The DCA further ruled that the medical deposition that the JCC relied on did not constitute competent substantial evidence to support the finding that the claimant satisfied the heightened evidentiary threshold. That doctor had no knowledge of the level of the claimant's exposure and was not certain to which specific chemical she was exposed, which is required under the current version of the statute.

Hadden v. Florida Medical Center and Specialty Risk Services, 2008 WL 2547362 (Fla. App. 1 Dist. June 27, 2008)
The DCA reversed and remanded the JCC's dismissal with prejudice of the claimant's re-filed petition for benefits, on the grounds that it was barred by the statute of limitations. An Order of July 10, 2006 granted the e/c's motion to strike. The claimant then re-filed a pfb within a matter of days and a hearing was held which resulted in a summary final order based on the statute of limitations. The claimant sought review of the summary final order which dismissed the re-filed petition. The DCA held that an order to strike a claimant's petition for benefits for failure to attend scheduled depositions was not a final appealable order because it did not contain "the required finding that the claimant's failure to appear resulted from a willful disregard of the judge's authority."

The DCA reversed the July 10, 2006 order striking the claimant's petition for

benefits and remanded with directions that the judge reconsider that order pursuant to the principles cited in the case. The DCA noted that if the judge again decides to grant the motion to strike, an order must be entered containing the requisite findings of willfulness. Lastly, the DCA reversed the summary final order because the petition upon which it was predicated was necessarily filed because of the striking of the claimant's earlier petitions.

Munroe v. US Food Service 2008 WL 2547298 (Fla. App. 1 Dist. June 27 2008)
The parties entered into a settlement agreement that was "contingent upon employer approval." Two days after the mediation the claimant obtained a new lawyer and sent a letter to E/C stating that claimant has opted out of the mediation agreement. The carrier replied 11 days later that the employer approved of the settlement and that they viewed the settlement as enforceable as the contingency was not mutual. The JCC granted the E/C's motion to enforce, concluding that the parties entered into a binding settlement. The DCA reversed noting that conditioning a contract upon approval by one of the parties shows that a binding contract has not yet been formed.