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CASE NOTES

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CASE LAW SUMMARIES: March, 2004

INCREASED HAZARDS

Duval County School Board and Johns Eastern Co., Inc. v. Golly, 29 FLWD 482 (1st DCA, February 24, 2004). The claimant fell at work on a concrete walkway. The fall resulted from a medical condition not related to the workplace. The JCC found the injury compensable because the concrete floor was, as a matter of law, a specialized hazard of employment. The First DCA disagreed and found that a fall to a concrete floor does not, as a matter of law, make a fall compensable. The First DCA ruled the 1994 statutory amendments required the major contributing cause test be applied and remanded the case for a particularized finding of "whether the claimant's condition of employment created an increased risk of the injuries he sustained."

AWW

Able Body Temporary Services and USIS v. Lindley, 29 FLWD 486 (1st DCA, February 24, 2004). The claimant did not work substantially the whole 13 weeks preceding the injury, was not a seasonal worker and there were no similar employees. The JCC ruled the claimant's AWW should be based on a contract of hire of $6.00 per hour for a 40-hour week. The First DCA reversed finding there was no competent substantial evidence of a contract for any length of time or a contract requiring 40 hours per week. The claimant's hours worked during the week depended upon the job assignment. The First DCA held the JCC should have used the claimant's actual wages.

RESPONSE TO PETITIONS

Bussey v. Wal-Mart Stores and Integrated Administrators, 29 FLWD 498 (1st DCA, February 27, 2004). The claimant filed a Petition requesting various benefits. The E/C did not deny or otherwise respond to the Petition. The claimant argued at trial that the E/C's failure to respond to the Petition amounted to a waiver of defenses. The JCC

disagreed and ruled in favor of the E/C. The First DCA affirmed and found that an E/C which neither denies a Petition within 14 days of receipt nor elects to pay and investigate is placed in the "identical position as the E/C that files a Notice of Denial."

MEDICAL BENEFITS/SETTLEMENT AGREEMENT

Somoza v. Sears Service Center Specialty Risk Services, Inc. and ITT Hartford, 29 FLWD 527 (Fla. 1st DCA, March 1, 2004). The First DCA reversed the JCC's ruling denying authorization of an MRI. The First DCA found that a diagnostic test used to determine causation is compensable, even if it is later determined the condition is non-compensable.

This case also dealt with a settlement agreement that listed one date of accident at the top of the agreement but included a provision that it resolved all outstanding accidents. The JCC found the agreement resolved both dates of accidents. The JCC, though, did not make any factual findings regarding the intent of the parties. The First DCA found the agreement was subject to more than one construction and therefore remanded the case for a determination of whether the parties intended the agreement to resolve both dates of accident or only the one date of accident listed in the agreement.

APPEALS

Lias v. Anderson and Shah Roofing Inc., and Bridgefield Employers Insurance Company, 29 FLWD 566 (1st DCA, March 5, 2004). The JCC found the claimant's injury was primarily caused by the use of cocaine. On appeal, the First DCA reversed because the application of the presumption was unsupported by the JCC's findings or the record and remanded for the JCC to apply the correct burden of proof to determine compensability. On remand, the JCC again denied the claim and this time found the claimant failed to show the injury occurred in the course and scope of his employment. The First DCA reversed finding the JCC deviated from the scope of remand which was solely limited to whether the accident was primarily caused by cocaine. The First DCA remanded the matter again with the earlier instructions limiting the scope of remand.

Barrios v. School Board of Broward County and Gallagher Bassett Services, Inc., 29 FLWD 667 (1st DCA, March 18, 2004). The First DCA reversed and remanded this cause for a hearing de novo because no transcript of the hearing could be prepared and efforts to reconstruct evidence had been unsuccessful.

RULE NISI

Pena v. Sunshine Bouquet Company and Hortica, 29 FLWD 595 (3rd DCA, March 10, 2004). The JCC granted the claimant an IME to be scheduled by the E/C within 10 days. The E/C failed to schedule an appointment within 10 days because the physician insisted on prepayment and a fee which exceeded the amount allowable for the examination. The claimant filed a Petition for Rule Nisi. The Circuit Court denied the Petition for Rule Nisi finding this was an interlocutory Order and these Orders are to be enforced by the JCC. Circuit Courts have jurisdiction to enforce only final Orders of a JCC.

PENALTIES

Anderson v. Gadsden County School Board and Florida League of Cities, 29 FLWD 616 (First DCA, March 11, 2004). The E/C paid a 20% penalty on the first late PTD payment and a $5.00 penalty on each subsequent late payment. The claimant argued that under §440.20(6), she was entitled to additional penalties on the subsequent late payments of PTD benefits. The JCC disagreed. The First DCA reversed and held the statute required a 20% penalty be paid on all late payments of non-award disability benefits.

FRAUD

CDL and Gallagher Bassett Services, Inc., v. Corea, 29 FLWD 664 (1st DCA, March 16, 2004). The claimant sought TTD/TPD benefits and PTD benefits. The JCC made a finding that the claimant made several statements that were false and/or misleading. The JCC further found the claimant had exaggerated his injuries for the benefit of the Court. The JCC held, though, the claimant's conduct did not "rise to the level of fraud as contemplated by Florida Statutes, §440.105(4)(b)" and therefore did not find the claimant's actions sanctionable under sections 440.105(4)(b) and 440.09(4). The JCC awarded the claimant TPD benefits and continued palliative medical care. The First DCA reversed and remanded for the JCC to conduct a fact-finding hearing to determine whether the claimant knowingly or intentionally made any false, incomplete or misleading statements concerning facts material to his claim and if so, issue a ruling the statements fall within the scope of section 440.105(4)(b).

IMES

DeCuba v. Indian River Community College and Gallagher Bassett Services, Inc.
29 FLW D668 (1st DCA, March 18, 2004). The JCC denied the claimant's claim for a heated home pool. The JCC relied in part on testimony of an IME physician who was paid more than permitted by section 440.13(14)(b), Florida Statutes (1999) (limits fees to $400.00). The First DCA reversed because the IME physician was disqualified from testifying. The E/C argued that 440.13(14)(b) was amended on July 1, 2002, and excluded an IME from the $400.00 limit and that amendment should be applied in this case. The First DCA disagreed ruling this amendment did not apply to IMEs before its effective date, but only to IMEs taken after that date, including those taken in cases where the injury occurred before that date.