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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

Appellate Jurisdiction/Non-Final Orders

Verly v. Orange County Female Detention Center/ASC (Fla.1st DCA 3/31/2010) (William H. Rogner and W. Rogers Turner, Jr.)
The claimant appealed the JCC's denial of her "motion to enforce" an alleged stipulation. The claimant had asked the JCC to rule that an agreement to authorize a doctor on the Pretrial should last until the JCC determined there was no further MCC. The DCA determined that order was non-final, and as such the DCA did not have jurisdiction to rule on the appeal. **Click here to view Order**

Attorney Fees and Costs/Fraud Defense

Childs v. NFI National Freight/Gallagher Bassett, (Fla.1st DCA 3/31/2010)
Extremely short opinion. The opinion indicates that the DCA reversed the JCC's denial of costs to claimant for "prevailing against the fraud defense". The opinion declined to rule on the overall award of fees, as there was no determination as to amount. **Click here to view Order**

Prevailing Party Costs

Sandvik Claims/Sentry Ins. v. Decoursey, (Fla.1st DCA 3/31/2010)

The claimant obtained an award of approximately three and a half months of TPD at trial. The carrier had asserted a 'voluntary limitation of income defense". The award included the entire period the claimant sought benefits, but for a five day period where the JCC determined the claimant had limited his income. The E/C appealed the JCC's denial of costs, asserting they had prevailed on the five day period. The DCA found the JCC's denial of costs was not an abuse of discretion. **Click here to view Order**

Attorney Fees/JCC's ability to deviate from Statutory Guidelines

Smith v. Gulfcoast Hosptial/Broadspire, (Fla.1st DCA 3/31/2010)
The DCA reversed the JCC's Order reducing the claimant attorney's fee based solely on the fact that the statutory formula would result in a $643 per hour fee, as it was "higher than was typically awarded in the District". The JCC then awarded an hourly fee (35 hours X $200/hr). The DCA noted the case was controlled by Alderman v. Florida Plastering, which had reversed a downward calculation of an hourly fee of approximately $847 per hour. There, the court noted that the statutory formula is a contingent fee, and the court had placed undue reliance on the customary rate charged in the area. They further noted that the local customary fee should almost never be a sole factor in deviating downward, as that would defeat the contingent fee structure found in the statute. **Click here to view Order**

Summary Final Order/Effect of Voluntary Dismissal

Louvre v. Hooters of West Palm Beach/USIS, (Fla.1st DCA 3/31/2010)
The DCA affirmed the JCC's denial of the claimant's Motion for Final Merits Hearing. The claimant filed a PFB in 2007, and subsequently filed a "notice of resolution of issues". In 2008, the claimant filed a PFB requesting the same benefits. The E/C filed a Motion for Summary Final Order alleging that the Notice of Resolution withdrew the 2007 PFB, thus removing a tolling for the SOL, and that the SOL had run. The opinion does not state the 2007 PFB was dismissed, either voluntarily or by the court. The JCC dismissed the 2008 PFB, but did not rule specifically on the 2007 PFB. The DCA found the dismissal of the 2008 PFB implicitly found the notice of resolution of the 2007 PFB was tantamount to a notice of voluntary dismissal. Additionally, the DCA held the claimant waived any argument re. the 2007 PFB by raising it for the first time on appeal. **Click here to view Order**

Cumulative Trauma/Requisite Medical Evidence

Federal Express/Sedgwick Claims v. Boynton, (Fla. 1st DCA 3/25/2010) The 1st DCA reversed the JCC's determination that the MCC of the claimant's low back and hip injuries was cumulative trauma from her work for the employer. The decision notes that there was no evidence of causation, either in the claimant's IME report, or in the claimant IME's deposition. The claimant's IME opined only that her injuries were due to her hip condition. The DCA noted that while specific "magic words" were not required, the statute does require evidence of occupational cause, of which none appeared in the over 3,000 pages of the record on appeal. **Click here to view Order**

Definition of Employee/Truck Drivers/Owner Operator

Reynolds v. CSR Rinker/Crawford and Co., (Fla. 1st DCA 3/25/10) The DCA

reversed an Order of the JCC finding a driver injured while hauling Rinker materials was not covered as an employee under the terms of F.S. s. 440.02(14)(d)4(2000). The claimant contracted to haul Rinker trailers with his own tractor. The DCA examined the relevant language of the "owner/operator" statute, which sets up a five part test as to whether an owner operator is an independent contractor or an employee. That version of the statute excludes such a driver from the definition of an employee only if all elements of the five part test are met. The DCA noted that the JCC erred in not considering the requirement that the owner operator furnish "all costs incidental to the performance of the contract". Under the terms of the agreement of the parties, Rinker was required to be responsible and pay for certain liability, bodily injury and cargo insurance. The DCA noted that buying and maintaining this insurance was a necessary part of the contract, and as Rinker, and not the driver, procured this coverage, the driver did not satisfy all five elements of the statute, and could not be considered an independent contractor. **(Note: this version of the statute was amended in 2005, replacing "all" costs with "principal" costs).** **Click here to view Order**

Supplemental Benefits (PIR over 20%)/Burden of Proof

Meneses v. City Furniture/Liberty Mutual,(Fla. 1st DCA 3/25/10) The DCA affirmed the JCC's denial of supplemental benefits for a claimant that sustained a WC injury in March of 2002 and subsequently received a 24% PIR. The claimant provided evidence at trial that he sustained the threshold rating, had been unable to return to his prior employment, and had been unemployed since his discharge from employment. The claimant then argued the requirement that he perform a job search should be waived, as he argued the carrier had not sent him a mandatory letter advising him of the job search requirement. The JCC denied supplemental benefits finding the claimant had not performed a work search. The claimant argued on re-hearing that the E/C bore the burden of proving it sent the letter. The DCA analyzed prior case law interpreting the old wage loss statute, and the carrier's responsibilities to inform the claimant re. job searching. The DCA distinguished the statute and case law re. wage loss, and found the carrier was not required to prove the letter had been sent. The Court noted that this ruling should not suggest that carriers are excused from such notifications, but also noted the case could have easily been resolved if the claimant were asked if he ever received any letter. **Click here to view Order**

Final Orders/Rulings beyond the Scope of Issues presented

Lawrence v. Aquarius Sales and Service/Amerisure Ins., (Fla. 1st DCA 3/25/10) The DCA reversed the portion of an order finding the claimant sustained a specific Permanent Impairment Rating, as that was not an issue before the JCC. **Click here to view Order**

Jurisdiction of Appellate Court/Failure to Timely File Notice of Appeal

Roadrunner Construction v. Fl.Dept.of Financial Services/Division of Worker's Compensation, (Fla. 1st DCA 3/25/10) This case examines in detail the requirement that appeals from final administrative orders be filed with the agency clerk within 30 days after rendition of the order to be reviewed. Here the Dept. of Financial Services issued an Order fining Roadrunner $667,000 on November 24, 2009. The 30th day was

December 24th, which was a holiday for the First DCA. However, the Agency from which the Order was issued (DFS) was open on December 24th. The DCA determined that the rule specifically prescribes where the appeal should be filed, and as the rule is unambiguous, the appeal filed on December 28, 2009 was untimely and was dismissed. The dissent noted the appellate rule did create ambiguity, and urged that the case should be decided on its merits. **Click here to view Order**

Firefighter Presumption/Evidence of Disability

Martz v. Volusia County Fire/Vol. Cty.Risk Mgmt.,(Fla. 1st DCA 3/17/2010)
The DCA reversed JCC Portuallo's finding that the claimant had not proven disability under the Firefighter presumption. At the time of the Merit Hearing, the JCC did not have the benefit of the DCA's Carney decision, only the earlier Bivens case. Bivens indicated that obtaining diagnostic studies *(there a several day stay including a heart catheterization)* in a hospital for atrial fibrillation symptoms, absent actual treatment, was not sufficient to sustain the burden to show "disability" under the statute. The Carney case modified Bivens, with facts similar to this case. In Martz, the claimant was evaluated for one and a half days, given medications and released with no work restrictions. The court reasoned his stay in the hospital prevented him from working, thus satisfying the disability requirement. **Click here to view Opinion**

Appellate Procedure

Skarka v. Lennar Homes, Inc./Broadspire, (Fla. 1st DCA 3/3/2010)
The DCA affirmed an order of the JCC denying a motion to disqualify the JCC, as it was unsworn. The DCA then issued a show cause order as to why fees should not be assessed against the petitioner (the claimant and his attorney) for failure to know or follow the rules of procedure, and failure to provide relevant information for review. The petitioner's attorney failed to address any of the issued raised in the show cause order. Accordingly, the DCA imposed attorney's fees against the petitioner and his attorney.