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CASE NOTES
CASE LAW SUMMARY
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EMA

Arlotta v. City of West Palm Beach/Johns Eastern Co., (Fla.1st DCA 3/26/2012)

The male claimant alleged enlarged breasts as a result of medications from the industrial accident. The claimant notified the JCC of a conflict and the JCC appointed an EMA to address the gynecomastia. The claimant failed to appear for the EMA and underwent surgery on his own. The claimant requested the EMA review the records of the unauthorized doctor and the E/C argued the EMA was prevented from evaluating the claimant. The JCC found the EMA would be unable to make a determination as the claimant had already undergone surgery and dismissed the claim. The DCA held that the findings that the EMA evaluation would be futile were not supported by the record and that cancelling the EMA was inappropriate. [Click here to view Order](#)

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WC Immunity/Denial asserting “outside course and scope”

Ocean Reef Club v. Wilczewski (Fla.3d DCA 3/21/2012)

Very lengthy opinion affirms the trial court’s denial of Summary Judgment based upon WC immunity. The extensive dissent suggests the potential for S. Ct. review. Plaintiffs, proceeding separately were each employed at the Ocean Reef Spa through 2006. Plaintiffs alleged, and Ocean Reef admitted for purposes of the SJ hearing, that Plaintiffs timely notified employer while employed of their illnesses, allegedly caused by exposure to harmful agents. No testimony was elicited that employer prevented or told employees they

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could not seek WC benefits. Plaintiffs agreed notice and information of WC coverage was provided and one Plaintiff had actually obtained benefits for an arm injury while employed. Almost two years after each stopped working with employer, they filed tort claims against employer, without ever filing PFBs. Employer then notified their carrier, which issued denials indicating “no injury in the course and scope of employment” and statute of limitations. The opinion, following Timmeny v. Tropical Botanicals, found the employer did not timely notify its carrier of the allegations of injury as required under F.S. §440.185. They found this failure to notify the carrier, along with asserting their irreconcilable denial that the injury was not in the course and scope of employment, barred their right to assert immunity. A lengthy dissent provides additional facts and explains why F.S. §440.185 should not apply as a bar, as it is a mechanism for the State to require employers to report accidents to carriers. The dissent notes however that case law does support estoppel where the carrier asserts the injury did not occur in course and scope of employment, which is exactly what the opinion states was the basis of the denial of WC benefits. [Click here to view Order](#)

Standard for Misconduct

Delvi, Inc. v. Fl. Unemployment Appeals Commission, (Fla.3d DCA 3/21/2012)

The Commission awarded the ex- employee benefits. They found his response to his supervisor’s request to move a pallet by saying “I’ll do it after lunch” and raising his middle finger did not constitute misconduct of a nature to preclude benefits. The DCA affirmed this ruling, citing to numerous cases outlining the standard for misconduct for UC, which is identical to the WC standard. [Click here to view Order](#)

Appellate Jurisdiction/Final/Non Final Orders

Aten v. Dell Air/Amerisure Ins., (Fla.1st DCA 3/14/2012)

The DCA dismissed the appeal, noting that a ruling that merely denies a Motion for Summary Final Order not disposing of the claim, is a non-final, non appealable order. [Click here to view Order.](#)

Dismissal of PFB for Failure to Pay Costs/Requirement of Willfulness

Jones v. Royalty Foods/Gallagher Bassett Svcs, (Fla.1st DCA 3/12/2012)

(Greg White and Bill Rogner)

Claimant sustained a compensable left shoulder injury. At a Merit Hearing, he then unsuccessfully sought compensability of a right shoulder condition. Following that hearing, an Order awarded the E/C \$7,162 in prevailing party costs. The claimant subsequently filed two separate PFBs seeking additional benefits related to the right shoulder. The E/C moved to dismiss those PFBs, pursuant to F.S. §440.24(4)(2007), which holds a JCC may dismiss pending PFBs if the claimant fails to comply with an order of the JCC within 10 days after the order becomes final. At that hearing, the claimant testified he was indigent. The JCC found the claimant specifically was not refusing to comply with the order, but did not have the economic means to comply. He entered an Order dismissing the PFBs until claimant was able to pay. The DCA analyzed case law holding that dismissal of a PFB must be accompanied by a finding of willful disregard of a JCC’s authority. The DCA held that

although a JCC may dismiss pending PFBs, such a dismissal must include a finding that the claimant's failure to pay is "willful, deliberate or contumacious." [Click here to view Order](#)

Failure to Rule on Pending Claims

De La Cruz v. Able Body Staffing/Broadspire, (Fla.1st DCA 3/6/2012)

The DCA affirmed the JCC's denial of all benefits for an alleged knee injury. However, the JCC did not rule on the pending issue of TPD related to a wrist injury, so the DCA remanded the case for determination of that pending issue. [Click here to view Order](#)

Non-Final Orders

Massey Svcs./Sedgwick v. Knox, (Fla.1st DCA 3/6/12)

The DCA dismissed claimant's appeal based on lack of jurisdiction. The JCC awarded TPD, but did not determine the amount due. The DCA also found the underlying Order was not an appealable non-final Order under FL.R.App.P. 9.180 (1) which determines *(A) jurisdiction; (B) venue; or (C) compensability, provided the Order expressly finds an injury occurred within the course and scope of employment, and that claimant is entitled to receive causally related benefits in some amount, and provided further that the JCC certifies in the order that the determination of the exact amount of benefits due to claimant will require substantial expense and time.* [Click here to view Order](#)