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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

Manzini & Associates P.A. v. Broward Sheriff's Office, 976 So.2d 688 (Fla. 4st DCA 2008)

This case involves a discharged former attorney who was handling a civil rights action for the claimant. The claimant settled her separate workers' compensation claim and signed a general release. The former attorney filed a motion to set aside the work comp settlement agreement and general release in order to pursue his attorney fee claims for the civil rights action. The 1st DCA upheld the JCC's decision that the former attorney is not entitled to set aside the work comp agreement, finding that the work comp attorneys had no knowledge of the pending case and therefore were not involved in an attempt to defraud the former attorney.

U.S. Agri-Chemicals Corp. V. Camacho, 975 So.2d 1219(Fla. 1st DCA 2008)

The JCC admitted the testimony of a neurosurgeon who was not an authorized treating physician, IME or EMA. The 1st DCA held that the JCC's decision was harmless, where the Judge stated in the Order that he would have reached the same result, and that the result was supported by competent substantial evidence in the form of testimony of claimant's IME.

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Crum Services v. Lopez, 975 So2d 1184 (Fla. 1st DCA 2008)

The contractor of the employee leasing company hired the employee on the spot and never had the employee fill out any paperwork on behalf of the contractor or employee leasing company. The contractor took the claimant to medical appointments and paid for the claimant's medical treatment. There was a specific contract which provided that employees must complete an application, W4, and I9 to be delivered to the employee leasing company before the employee commences employment. The contract also provided that the contractor assumes full responsibility otherwise.

The 1st DCA reversed the JCC's Order, finding coverage on the part of the leasing company. They held that the claimant is not an employee of an employee leasing company for work comp purposes, where the contract required that workers fill out specific forms to qualify as leased employees, and the contractor accepted responsibility for non-leased employees.

There are several bills pending in the legislature trying to address the issue of "gap coverage", where client employers (who often disappear or are judgment proof) fail to provide required documentation triggering coverage to the employee leasing company.

Matrix v. Hernandez, 975 So.2d 1217(Fla. 1st DCA 2008)

The claimant provided a false social security card to employer upon obtaining employment. The 1st DCA affirmed the JCC's Order holding that providing a false SS# is not necessarily fraud/misrepresentation barring recovery of benefits. For benefits to be barred for an employee found to have engaged in a forbidden act, the act requires that the false documentation was presented to secure benefits. The 1st DCA held that although clearly a violation of F.S. § 440.105(4)(b)(9)(2004) (*defining insurance fraud to include presenting false identification for the purposes of securing employment*), the claimant's actions did not violate F.S.§440.09(4)(a)(2004), which requires that the act be done for the purpose of securing work comp benefits.

F.A. Richard and Associates v. Fernandez, 975 So.2d 1224 (Fla. 1st DCA 2008)

The 1st DCA reversed the Order of the JCC and held that the E/C's failure to plead entitlement to costs did not bar recovery of costs. The 1st DCA reasoned that the language of F.S. §440.34(3)(2205) providing that costs shall be taxed against the non-prevailing party is mandatory, and not subject to waiver if not listed on the Pre-Trial Stipulation. They noted this language placed the claimant on notice that costs were at issue because they are at issue in all work comp cases.

Stubbs v. Bob Dale Construction, 33 Fla. L. Weekly D837 (1st DCA 2008)

The claimant worked in construction and his hours per week varied each week. They were anywhere from 12.5 hours to 40 hours per week during the prior year. During the 13 weeks prior to the work related injury, the claimant only averaged 26 hours per week. The claimant filed a petition requesting that the AWW be determined by using the annual amount to be divided by 52 weeks as opposed to using an AWW reflecting only 26 hours of work per week.

The 1st DCA reversed and remanded the JCC's Order holding that claimant's customary hours for purposes of calculating the AWW did not constitute the hours the claimant actually worked for the 13 weeks prior to the work related injury. In coming to its conclusion, the 1st DCA reasoned that F.S.§440.14(1)(a)(2004) indicates that a claimant employed 13 weeks prior to his or her accident who worked 75% of his or her "customary hours" during that period should have his or her AWW calculated based on his or her average during that 13 weeks. As such, the 1st DCA remanded the case to the JCC for determination of proper AWW, holding that F.S.§440.14(1)(a)(2004) did not apply since it did not appear that the claimant worked 75% of his customary hours during the 13 weeks prior.

This case sought to clarify the difference between "customary" and "available" hours. When calculating an AWW for claimants with periodic or varying pay, make sure there are no arguments that the 13 week

pay history was not an irregular or non customary period of employment.