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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

PTD benefits/”Temporary PTD”

Matrix Employee Leasing/ First Commercial Claims v. Hadley,
(Fla.1st DCA 11/29/2011)

The DCA, in a 27 page opinion, with lengthy and impassioned dissents by Judges Padovano and Van Nortwick, reversed a JCC’s award of “temporary” PTD benefits, finding such benefits do not exist in Chapter 440. The E/C paid 104 weeks of temporary benefits, as well as impairment benefits. The claimant, facing a surgical recommendation, then filed for PTD. The JCC considered the treating doctor’s testimony, which did not state what the claimant’s disability status would be upon reaching MMI. The doctor testified it was likely the claimant could work light duty upon reaching MMI. The JCC acknowledged the statute does not provide for “temporary PTD”, but felt that the legislature could not have intended that a claimant would be left out in the cold where his temporary benefits have expired, but where he has not reached overall maximum medical improvement. The DCA analyzed the PTD statute, as well as their prior decision in Oswald, which sought to deal with the “gap” period, and established the rule that the claimant who is not at MMI following expiration of the 104 weeks must present evidence that total disability will exist and remain after MMI. Judge Padovano, the only current judge on the bench when the court issued Oswald (and from whose concurring opinion the majority quoted) argued at length that the statute can be read to provide for temporary PTD. Judge Van Nortwick discussed constitutional issues, including barriers to access to courts. **Click [here](#) to view Order.**

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Independent Medical Examiners/Binding nature of IME opinion

Keeton v. KFC/Gallagher Bassett, (Fla.1st DCA 11/16/2011)

Case argued at comp convention

The DCA affirmed the JCC's denial of compensability of carpal tunnel per the EMA's opinion. Although the authorized treating physician opined no MCC existed, the E/C's subsequently chosen IME felt that MCC did exist. The claimant appealed the appointment of the EMA, arguing the E/C was bound to their IME's opinion, per subsection 5(b) of the IME statute. The DCA noted the JCC correctly distinguished the Dawson case (*no conflict where authorized doctor only examined the wrist but the alleged conflict concerned the shoulder*). Here the authorized doctor examined all body parts in question. The court found the "bound by" language of 5(b) controlled the limits on how many IMEs a party may obtain, and did not affect the EMA issue. A concurring opinion noted that the disagreement in opinions was sufficient to trigger appointment of the EMA. **Click [here](#) to view Order.**

Statute of Limitations/Burdens of Proof

Miranda v. Azul Plastering/The Hartford, (Fla.1st DCA 11/16/2011)

The JCC denied all benefits based on the SOL defense. The DCA analyzed the shifting burdens in an SOL case. The burden of proof on the claimant is a preponderance of the evidence, unless the E/C has complied with both sections 440.185 and 440.055, in which case the claimant has a higher burden of proof – clear and convincing evidence. When a claimant proves estoppel by preponderance of the evidence, the burden shifts to the E/C to show the claimant "had actual knowledge" of the limitations period. It was uncontested that the E/C did not provide notice in accordance with section 440.185; therefore, the appropriate standard of proof for the Claimant to establish estoppel is preponderance of the evidence. The JCC here applied the standard of clear and convincing evidence anyway. The E/C conceded that was error, but asserted it was harmless because the E/C proved, and the JCC found, Claimant had actual knowledge of the statute of limitations. The DCA found the JCC based that conclusion on several erroneous findings: that the E/C mailed notice of the statute of limitations to a Miami address in 2009; that Claimant had moved away from that mailing address at some earlier point in time; that the mailing was not returned as undeliverable; and that Claimant's mail was, for a time, forwarded from that address to Claimant. As it was not clear the mailing was forwarded to Claimant, those findings were insufficient, as a matter of law, to establish actual knowledge. The DCA remanded for application of the correct standard of proof and, if necessary, clarification of findings concerning the change in Claimant's residency.

Click [here](#) to view Order.

Appeals/Final Orders

Eaton v. City of Winter Haven/PGCS, (Fla.1st DCA 11/6/2011)

The JCC awarded PTD, but appointed an EMA to determine the compensability of a claim for psychiatric treatment. As the Order did not dispose of all issues presented to the JCC, it was non-Final and not ripe for Appellate Review. **[Click here to view Order](#)**