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CASE NOTES
CASE LAW SUMMARY
November 2013

If you have any questions regarding Case Law Summaries, please contact W. Rogers Turner, Jr. (rturner@hrmcw.com) or Matthew Troy (mtroy@hrmcw.com)

City of North Bay Village/Fla. Mutual Ins. Trust/
Fla. League of Cities, Inc. v. Guevarra
Statute of Limitations/Estoppel

(Fla.1st DCA 11/6/2013)

The DCA reversed the JCC’s Order awarding benefits, which found that estoppel applied to bar the SOL defense for the E/C. On 3/15/07, Claimant, a law enforcement officer, informed his employer of his placement on light duty following findings of elevated blood pressure. The employer completed a notice of injury on 3/23/07, and on 3/26/07, the carrier sent the claimant a certified initial claim packet (including the statutorily required informational brochure), which the claimant’s wife signed for. Claimant first filed a PFB for the 2007 DOA in October of 2011.

The JCC found the E/C was estopped from asserting the statute of limitations, finding the carrier sent a “generic” information packet. Further, the JCC found the E/C authorized no care upon receipt of the Notice of Injury, but rather controverted the claim in their April 2007 Notice of Denial. Finally, the JCC found the brochure contained no information regarding the presumption found in Chapter 112.18(1). The DCA noted that the carrier fully complied with the statute, and none of the JCC’s stated reasons provide sufficient evidence to support estoppel. [Click here to view Opinion](#)

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Brown v. Pybus Electric Co./North American Risk Services

(Fla. 1st DCA 11/6/2013)

Q Rules of WC Procedure/Two Dismissal Rule

The claimant sought re-authorization of three separate doctors. The DCA found the JCC erred in dismissing claims for two of the doctors under the “Two Dismissal Rule” (60Q-6.116(2)). They affirmed as to the third without comment. The JCC found that claims for authorization of Dr. Patel had been dismissed in five separate PFBS (2002-2012), and claims for authorization of Dr. Stringer in three separate PFBS (2002-2006). The DCA noted that two of the five Patel PFBS, and three out of three Stringer PFBS were resolved administratively (either by stipulation or at mediation). They noted this “administrative resolution” was not dispositive however, as the Record on Appeal did not contain evidence of either *filings* which would constitute a voluntary dismissal, or *announcements on the record* (which could have been mediation agreements or transcripts) of a voluntary dismissal. The DCA found a 2008 “Order closing File” also did not satisfy the Rule, as any such dismissal in that order would not have been voluntary. As to the remaining three Dr. Patel PFBS, the DCA found the E/C did not sustain their burden to show these claims specifically sought authorization of Dr. Patel, but rather were seeking psychotherapy, perhaps for different time periods or different amounts of such visits. On remand, the E/C may seek to present such evidence. [Click here to view Opinion](#)

Hernandez v. Colonial Grocers, Inc

(Fla. 2d DCA 10/25/13)

Employer Manuals/Provisions Compelling Arbitration

Plaintiff brought claims under the Fair Labor Standards Act (FLSA) and F.S. s. 440.205 (WC retaliation). The trial court granted the Employer’s Motion to Compel Arbitration, pursuant to the language in the employer’s manual. The agreement further stated that the parties would each initially bear the costs of the arbitration equally, but that the losing party would pay the arbitrator’s entire fee, as well as prevailing party attorney fees. The DCA examined the language of the FLSA, which contains no provision for prevailing defense fees and costs. They declined to find the initial “50/50” pay provision rendered the arbitration agreement unenforceable. However, they reversed the trial court ruling, holding the prevailing party fee provision clearly at odds with the FLSA. Where such agreements defeat the remedial purposes of the act (here to encourage employees to seek redress), the arbitration agreement is unenforceable. [Click here to view Opinion](#)

Spencer v. Florida Power and Light/Broadspire,

(Fla.1st DCA 10/31/2013)

Derrick Cox - PCA

The First District Court summarily affirmed the JCC's ruling in favor of the E/C, meaning the Court determined that no legal or factual basis existed to allow the court to even consider reversing the decision. [Click here to view Order](#)