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# CASE NOTES

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## CASE LAW SUMMARIES: October, 2003

### PENALTIES

Greenberg v. Cardiology Surgical Assn., 28 FLW D2256 (Fla. 1st DCA, Sept. 26, 2003). The JCC awarded penalties and interest pursuant to Sections 440.20(6) and 440.20(8), Fla. Stat. It was undisputed that the E/C was late on several occasions in making the payment of disability benefits. The JCC ordered the E/C to pay penalties in the amount of 20% of the first installment and the sum of \$5.00 for each subsequent late installment. At issue was the language at subsection (6), which read: "...there shall be added to each unpaid installment a punitive penalty of an amount of an amount equal to 20% of the unpaid installment or \$5.00...." The Court found that the Legislature made a mistake in drafting the statute and that the words "or \$5.00" should have been deleted during the 1994 amendments. Accordingly, penalties should be paid in the amount of 20% for each unpaid installment and the "or \$5.00" language should be completely ignored.

### TEMPORARY PARTIAL DISABILITY

Stewart v. CRS Rinker Materials Corp., 28 FLW D 2299 (Fla. 1st DCA, Oct. 3, 2003). The JCC denied temporary partial disability benefits because the claimant had been terminated from the employer for excessive absenteeism. The JCC failed to consider whether the claimant satisfied his burden of establishing a causal relationship between the work injury and loss of earnings following the termination. The claimant had attempted various jobs following the termination and had medical restrictions following his termination. The Appellate Court decided that it was improper to deny benefits solely based upon the

claimant's termination. Once the JCC determined that the claimant had been terminated, the question should have then become whether the claimant satisfied his burden of showing a causal relationship between the injury and the loss of earnings after his termination.

The second issue in this case involved a second period of TPD benefits following the claimants termination. The claimant moved to Pensacola, Florida, due to family problems. The JCC denied the payment of temporary benefits during this period of time as well. The JCC made no finding that the claimant's move was the result of improper motivation or that the claimant's relocation following the termination was motivated by a desire to avoid work. The appellate court also reversed and remanded this portion of the award for the JCC to consider all of the evidence and whether the loss of earnings were related to the industrial accident.

### TRAVELING EMPLOYEES

Ramirez v. Farish, 28 FLW D2345 (Fla. 1stDCA, Oct. 7, 2003). The employer was located in Kentucky. The claimant worked as a horse groomer. The employer was doing business with its staff housed in dormitories in Florida at the time of the accident. The claimant was transporting personal laundry and "barn" laundry from his dormitory to the Laundromat when he was hit by a car. The JCC denied all benefits.

The Appellate Court reversed and found that the claimant was a traveling employee. If an employee is required to travel in connection with his employment and he suffers an injury while in travel status, then the employee is eligible for benefits so long as the injury arose out of the course and scope of the employment and not at a time during the trip where there was a distinct departure for a non-essential personal errand. Since the claimant was transporting "barn laundry" he was not on a non-essential personal errand. The Court applied the traveling employee doctrine and found the accident to be compensable.

### ILLEGAL ALIENS

Safeharbor Employer Services I, Inc., v. Cinto Velazquez, 28 FLW D2358 (Fla. 1st DCA, Oct. 13, 2003). The issue is whether an illegal alien may receive benefits under Chapter 440, Fla. Stat. (2002). The 1st DCA held that an illegal alien can receive benefits under Chapter 440.

### FRAUD

Village Apartments v. Hernandez, 28 FLW D2454 (Fla. 1st DCA, Oct. 22, 2003). The employer/carrier raised a fraud defense at trial. The JCC denied the fraud defense because the claimant did not make any written misrepresentations. The 1st DCA found that the JCC did not properly apply the law and that the fraud statute applies to any oral or

written statements concerning facts material to the claim. Misrepresentations do not need to be in writing to constitute fraud. Oral representations are sufficient.

#### CASE NOTES

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