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CASE NOTES

CASE LAW SUMMARY
October 2008

If you have any questions regarding Case Law Summaries, please contact W. Rogers Turner, Jr. : rturner@hrmcw.com

HRMCWW endeavors to post appellate cases relevant to our client's interests as soon as they are released. Please note that the opinions listed do not become final until the time has expired for litigants to have an opportunity to file motions for rehearing.

Lee County/Gallagher Bassett v. Fifer , (Fla. 1st DCA 10/29/08)
Unilateral Suspension of Benefits - Claimant was injured in '83 and administratively accepted as PTD. In 2004, E/C performed IME, who recommended an FCE. The claimant failed to appear, and the E/C unilaterally suspended her PTD benefits. JCC Spangler found no authority to do so, and reinstated PTD benefits. The DCA held that as there was never an outstanding order adjudicating PTD, the E/C were within their rights to unilaterally suspend benefits. Further, the DCA noted the JCC awarded PTD with no medical findings whatsoever. The DCA also reversed the JCC's decision to strike the claimant's IME doctor's testimony, which the E/C conceded was error. Click here to read case

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Florida Supreme Court reverses 2003 fee amendments, holds JCCs may award hourly fees

After a lengthy wait, the Florida Supreme Court has reversed the 2003 law limiting claimant attorney fees, holding that claimant attorneys may receive hourly attorney fees for prevailing in workers' compensation cases. The Court issued a 22 page opinion in Emma Murray v. Mariner Health/Ace USA today, which considered the claimant's arguments that the 2003 legislative amendments limiting claimant attorney fees were (1) unconstitutional and (2) inherently ambiguous. The court did not address the constitutional arguments. However, the court held that reasonable attorney fees for claimants, when not otherwise defined in the workers' compensation statute, are to be determined using the factors of rule 4-1.5(b) of the Rules Regulating the Florida Bar. (the "Lee Engineering Factors"). The crux of the Court's analysis centered on the ambiguity created between subsections (1) and (3) of the F.S. §440.34(2003). Section (1) provides that a fee for the claimant must be approved as reasonable by a JCC and that such a fee must equal the statutory percentage formula, and that the JCC cannot approve an amount exceeding that formula. Subsections (3) and (1), however, do not reference each other. Subsection (3) merely authorizes reasonable fees without mention of the formula. The Court examined the history of claimant attorney fees and the legislative changes from 1941 to 2003. Analyzing the 2003 amendments, they found the statute to be ambiguous. However, the court acknowledged the legislature's intent to correct abuses or excesses in regard to hourly fees, expressly noting that JCCs ***"who consider fees under subsection (3) "must be vigilant to award only reasonable and necessary fees. Further, we expect the appellate courts to review the factors in cases presented to the courts so that only reasonable and necessary fees are awarded."*** As for the underlying Murray case, the court remanded for entry of an order awarding the claimant attorney a fee of $16,000. His fee initially awarded was $684.84. There were no dissenting opinions.
Click hear to read opinion

Batista v. Publix Supermarkets, Inc., 1D07-3140 (Fla. 1st DCA 2008): Statute of limitations claim on a 1986 date of accident. The First District Court of Appeals holds competent substantial evidence did not support JCC's ruling that carrier had inadequate notice of hearing on motion to compel set in 1997, therefore statute of limitations defense waived as carrier failed to raise statute of limitations at that motion hearing. Court also holds that the JCC's has authority to vacate an order prior to it becoming final.
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Branham v. TMG Staffing Services: 1D07-4071 (Fla. 1st DCA 2008): On Motion for Rehearing and Clarification of a June 2008 Order, the court affirms the decision of the JCC. The JCC found that the Claimant did not present competent substantial evidence that the Employer/Carrier did not provide the informational brochure. The original opinion from the First District reversed the decision so the JCC could apply the preponderance of the evidence standard. On Rehearing, the Court acknowledges that as competent substantial evidence is a lesser burden of proof than preponderance of the evidence, the error was harmless. Significantly, the case places the burden on

the Claimant to demonstrate that he did not receive the informational brochure. Dissent states burden is on the employer/carrier to demonstrate the brochure was provided or claimant had actual knowledge of the limitations period.
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Anderson Columbia v. Brewer, 1D07-5658 (Fla. 1st DCA 2008): Court holds Employer/Carrier not entitled to 440.39 lien against Claimant's recovery from legal malpractice claim against attorney's that mishandled third party liability claim. Engages in statutory analysis and determines that the malpractice is not an injury relating to the claimant's job duties. The court distinguishes it from cases involving medical malpractice as injuries flowing from medical malpractice are compensable. The court also notes the Employer/Carrier could have protected their interest by filing suit. Click here to read case

Rodriguez v. Quality Engineering Products, 1 D06-6578 (Fla. 1st DCA 2008): Reverses JCC's denial of PTD benefits rejecting the JCC finding there had been no prior adjudication of PTD benefits. Previously, the JCC had entered an order on a proper Social Security Offset. The Court held that an adjudication of the offset could not have been made without an underlying right to PTD benefits. Cites *Knapp v. Fla. Mining & Minerals*, 662 So.2d 983 (Fla. 1st DCA 1995). Suggests that a carrier may not unilaterally cut off benefit that is related subject of prior order (absent a petition to modify), even if related subject was not specifically at issue in prior order.
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Bivens v. City of Lakeland, 1 D07-5688 (Fla. 1st DCA 2008): As testimony did not establish that essential hypertension was arterial or cardiovascular in nature, it was not a form of hypertension covered by the presumption of s. 112.18(1). The Claimant also had microvascular angina, but, Claimant failed to demonstrate disability, testifying he was always able to perform the physical requirements of the job, there were no work restrictions placed on the Claimant and missing work due to medical appointments does not equal disability. In this claim, the Claimant missed one day of work due to a doctor's appointment, **six days after a heart catheterization** and on a third occasion several hours for a stress test. The Court stated, "he missed work only so his condition could be diagnosed, not because it was a debilitating physical ailment. . . If testing or treatment, standing alone, equaled 'disability', everyone would be disabled upon their first visit to a doctor's office." As there was no disablement, no presumption. As there was no disability, no presumption for the MVA, so the finding of compensability was reversed.
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