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CASE NOTES

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CASE LAW SUMMARIES: September, 2005

WORKERS' COMPENSATION IMMUNITY

Protegrity Services, Inc. v. Vaccarro, 30 FLWD 1989 (5th DCA August 24, 2005)

The claimant filed a tort action against the carrier in Circuit Court alleging the carrier falsely threatened an authorized doctor with a utilization review for the purpose of interfering with the claimant's relationship with the doctor and to deprive her of medical care. The claimant further alleged that the carrier was substantially certain its conduct would cause the claimant to sustain injuries.

The carrier filed a Motion to Dismiss alleging that the Circuit Court was without jurisdiction to hear the claim based on workers' compensation immunity. The Circuit Court denied the carrier's Motion to Dismiss. The Fifth DCA agreed with such decision as the claimant alleged in her complaint that the carrier intentionally injured her in the process of administering benefits.

This case relied on the recent Supreme Court case of Aguilera, which severely weakened immunity defenses available to employers and carriers. These cases make it clear that allegations by a plaintiff of conduct intended to injure a claimant will survive a motion to dismiss in Circuit Court.

SURVEILLANCE EVIDENCE

Medical Logistics, Inc. v. Marchines, 30 FLWD 20, 26 (1st DCA August 29, 2005)

The JCC issued a pretrial order that directed all discovery be noticed and submitted to the opposing party at least 30 days prior to the date of the final hearing. Twenty one days prior to the final hearing date, the claimant's attorney received copies of surveillance tapes from counsel for the employer/carrier. When the employer/carrier attempted to admit these tapes into evidence at the final hearing, the judge ruled

that the tapes were inadmissible based upon his uniform policy that surveillance evidence must be produced at least 30 days prior to a final hearing.

The First DCA overturned the JCC's decision and ordered the judge to make a case specific determination as to whether the admission of the surveillance would actually result in procedural prejudice to the objecting party. The exclusion of the surveillance tapes on a per se basis was an abuse of discretion and the judge's ruling was reversed and remanded.

STATUTE OF LIMITATIONS

Fontanills v. Hillsborough County School Board, 30 FLWD 2191 (1st DCA September 16, 2005)

The JCC held that the claimant's claim was barred by application of the one year statute of limitations. The claimant argued that the statute of limitations was not applicable because the employer/carrier failed to inform the claimant of the one year limitation in its initial informational brochure. The First DCA reversed the JCC's decision stating that if a claimant can establish that a carrier failed to provide the claimant with notice of the applicable statute of limitations in its initial informational brochure, the burden falls upon the employer/carrier to establish that the claimant had actual knowledge of the applicable statute of limitations through other means.

This case weakens the Statute of Limitations defense, and should encourage carriers to document notice to the claimant of the statute of limitations.

ENTITLEMENT TO IME

Zabik v. Palm Beach County School District, 40 FLWD 2260 (1st DCA September 22, 2005)

After the employer/carrier accepted the claimant as permanently totally disabled, counsel for the employer/carrier filed a motion asking the JCC to compel the claimant's attendance at a psychiatric IME despite there being no outstanding petitions. The employer/carrier's counsel argued that if the employer/carrier at sometime in the future directed the claimant to return to work and terminated the claimant's PTD benefits, he anticipated the claimant would claim a need for psychiatric treatment and allege an inability to return to work due to a psychiatric condition. The JCC approved the employer/carrier's motion compelling the claimant to appear for a psychiatric IME. The claimant appealed and the First DCA reversed the JCC's ruling indicating that an IME is only permitted if the facts disclosed reveal a dispute regarding overutilization, medical benefits, compensability, or disability. Since the employer/carrier could only show a potential conflict in the future and not in the present, the First DCA ruled that the JCC improperly awarded a psychiatric IME.

ENTITLEMENT TO TPD BENEFITS

Myers v. Hillsborough County School Board, 30 FLWD 2262 (1st DCA September 22, 2005)

The JCC denied the claimant's claim for TPD benefits for the time period immediately after the claimant stopped working for the employer. The claimant contended that he quit because his supervisors required him to work outside his work restrictions. The employer/carrier failed to present any evidence to prove otherwise. Since the claimant was the only witness to provide testimony as to whether the employer was able to accommodate his restrictions, the First DCA ruled that the JCC improperly held that the claimant voluntarily limited his income when he stopped working for the employer as the only evidence established that the employer was unable to accommodate the claimant's restrictions.

REPORTING OF OCCUPATIONAL DISEASE

Polk County Board of County Commissioners v. Ross, 30 FLWD 2263 (1st DCA September 22, 2005)

The JCC found the claimant's occupational disease compensable and held that the claimant timely reported her occupational disease to the employer. The employer/carrier argued that the claimant did not timely report her occupational disease to the employer as per statute. The First DCA affirmed the JCC's ruling in stating that if the cause of the injury could not be identified without a medical opinion and the employee advised the employer within 30 days after obtaining a medical opinion indicating that the injury arose out of and in the course of employment, the notice requirement is satisfied. The First DCA stated there was competent substantial evidence that the claimant reported her occupational disease to her employer within 30 days after she obtained a medical opinion indicating that her injury arose out of and in the course of her employment.

PTD SUPPLEMENTAL BENEFITS

Hillsborough County School Board v. Ward, 30 FLWD 2279 (1st DCA September 23, 2005)

The employer/carrier appealed an order awarding the claimant PTD supplemental benefits after the claimant turned 62 when the claimant was accepted as PTD before the age of 62. The First DCA held that in order for an employer/carrier to terminate the claimant's PTD supplemental benefits at age 62 the employer/carrier must establish that the claimant is eligible for both social security retirement and social security disability benefits. The First DCA approved the JCC's decision in holding that the claimant was entitled to PTD supplemental benefits after the age of 62 since the employer/carrier failed to present any evidence that the claimant was eligible for social security disability benefits.

The case is contrary to longstanding interpretation of the law regarding PTD supplemental benefits. Although the case deals with a 1993 date of accident, it essentially states that having an injury that is severe enough to qualify for SSI or SSD does not necessarily mean that they are legally eligible for SSI or SSD. The First DCA found under the statute, where the employer/carrier is arguing that supplemental benefits should stop after 62, the employer/carrier has an obligation to present evidence that the claimant has a legal entitlement to both retirement and disability benefits at age 62.

PERMANENT TOTAL DISABILITY

Brevard County School Board v. Hopkins, 30 FLWD 2281 (1st DCA September 23, 2005)

The JCC found that the claimant was entitled to permanent total disability benefits based upon her physical and psychiatric condition. The First DCA overruled such decision because there was no evidence establishing that the claimant had reached psychiatric MMI at the time of the hearing. Therefore, the award of PTD benefits to the claimant was premature.

CASE NOTES

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