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CASE NOTES
CASE LAW SUMMARY
September 2009

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

Motions for Summary Final Order/Genuine Issues of Material Fact

Scanlon v. T.G. Investments/Liberty Mutual, (Fla.1st DCA 9/28/2009) While no facts are given, the JCC granted E/C’s Motion for Summary Final Order. The Claimant appealed, and the DCA reversed, citing to cases which enunciate the S.J. Standard to be used by JCCs, as well as the general standards for Summary Judgment. Finally, the DCA cited a 1980 U.S.S.Ct. case which holds that the Full Faith and Credit Clause should not be construed to preclude successive WC settlements in different states. [Click here to read case](#)

Summary Judgment/WC Immunity/Estoppel and reliance on Notice of Denial

Schroeder v. Peoplelease/L&S Logistic Svcs. Inc., (Fla. 1st DCA 9/28/2009) The Circuit Court entered Summary Judgment for the Defendant Employer. The claimant was employed by Peoplelease. In the course of making a delivery, the claimant had a heart attack. The E/C issued a six paragraph Notice of Denial, which essentially stated the claimant’s case was not compensable, not causally related to employment and due to a pre-existing condition. The claimant filed sued in tort, and alleged the E/C was not entitled to immunity based upon the denial. The plaintiff alleged they detrimentally relied on the denial, and incurred medical expenses. They argued that the denial created material issues as to whether the E/C asserted irreconcilable positions in their notice of denial, and whether estoppel was appropriate. In a lengthy opinion, the DCA agreed and reversed and remanded. [Click here to read case](#)

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Misconduct/Termination

Reedy v. Fl. Unemployment Appeals Commission/Waste Mgmt., (Fla. 1st DCA 9/28/2009) The DCA determined the UC Commission improperly reversed the Appeals Referee's finding that benefits were due. The opinion repeats the "Good Cause" standard. . . " circumstance that would reasonably impel the average, able-bodied, qualified worker to give up his or her position". [Click here to read case](#)

Attorney Fees/Liens of Prior Counsel based on Quantum Meruit

Rosenthal, Levy & Simon, P.A. v. Scott/Suntek Transport/Optacomp, (Fla.1st DCA 9/14/09) The claimant was represented by Rosenthal. After an offer of \$7500 had been made to settle the controverted case, the claimant discharged Rosenthal and hired attorney Celeste. Celeste obtained a settlement of \$10,000. After application by Rosenthal for a quantum Meruit fee, JCC Basquill denied Rosenthal fees, reasoning that under the 2003 amendments, no fee was due via the lien as no benefits had been secured. The DCA reversed and remanded. They noted that the ability of discharged attorneys to file liens for fees had been available for over a century. The court noted the 2003 amendments had not overruled the 1994 Dusek case, which held that discharged attorneys were entitled to compensation based on the value of services which laid the predicate for a settlement ultimately reached. The DCA noted that the 2003 law was similar to the 1991 law applicable in Dusek, and if the legislature sought to overturn Dusek it could have done so. However, the court did note that on the issue of amount of a fee under such a lien, the competing interests of a claimant's absolute right to choose their counsel must be weighed against the discharged attorney's right to be compensated. The DCA noted the 2003 amendments clearly limit the total amount of fees that may be paid, and that JCC's are charged with apportioning the fees between former and present counsel. They advise successor attorneys to avoid duplication of efforts. The case was remanded for the JCC to so apportion the fees. [Click here to read case](#)

Attorney Fees/Dismissal for Lack of Prosecution

Vasallo v. Goldwire/Conulier Ind. Inc/Claims Center, (Fla.1st DCA 9/14/09) The claimant obtained benefits pursuant to a mediation and stipulation in 1996. The stipulation reserved jurisdiction as to attorney fees. On 9/19/08, the E/C moved to dismiss all pending claims for fees for lack of prosecution. On 10/3/08, the claimant attorney filed a verified petition for fees based on the 1996 Stipulation. The JCC dismissed the fee petition. The DCA reversed several bases for the JCC's decision. The DCA found that 440.25(4)(i) did not operate to bar the petition, as less than one year had passed from the date the claimant attorney filed the fee petition to the date of the hearing on the petition. The DCA further found the JCC erred in relying on cases interpreting a prior WC Rule (11b) which had been superseded by the 2004 Rule Amendments. Finally, the DCA noted the JCC erred in rejecting the Appellant's argument that the Apellees had the burden of proof re: the defense of Laches to (1) lack of diligence by the party against whom the defense is being asserted and (2) prejudice to the party asserting the defense. [Click here to read case](#)

