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CASE NOTES
CASE LAW SUMMARY
September, 2012

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

Notice to Employer Imputed to Carrier

Gomez Lawn Service/Eugenio Lopez v. The Hartford, (Fla.1st DCA 9/28/12) (William H. Rogner)

In a lengthy opinion, the DCA reversed and remanded the JCC's finding that the claimant/employer's failure to timely notify the carrier barred his claim under the Notice statute. The claimant owned a lawn business with his wife. After sustaining injuries in a car accident on July 13, 2010, he notified his wife and began receiving treatment under PIP. His wife notified the WC carrier of the accident for the first time on 12/1/10. Shortly thereafter, the claimant filed a PFB. The JCC dismissed the claim, finding the claimant and employer were effectively the same entity, and the claimant's wife should have timely notified the carrier based upon the nature and seriousness of the injuries. The DCA held that the Notice statute requires notice only to the employer and not the carrier. The DCA noted that while the result may seem unfair, the remedy for the situation of claimant/employers and notice lies with the legislature and not the courts. The DCA noted that prior versions of the statute required notice to both the Employer and Carrier, but carrier notice provisions were removed. The DCA also noted that the provisions of F.S.§440.41(1) imputes knowledge of an employer to the carrier. **Click here to view Order**

Appellate Procedure/Payment of Required Filing Fees

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Nutech/Smooth Slide v. Doleshall, (Fla.1st DCA 9/19/2012)

After filing an Appeal with the DCA, the Appellant failed to file the $300 dollar filing fee, and failed to respond to multiple notices and Orders of the Court. The DCA dismissed the appeal, and further found that due to a complete lack of regard for the court's procedure or authority, Appellant's attorney shall pay the $300 fee as a sanction. **Click here to view Order**

Independent Medical Examinations/Requirement of a Dispute

Bellamy v. Golden Flake/Charter Oak Ins./Travelers Ins., (Fla. 1st DCA 9/11/12)

The DCA reversed the JCC's Order compelling the claimant to attend the E/C IME. Although the claimant filed a PFB in December of 2010, he dismissed the PFB in March of 2011. He continued receiving authorized care for his compensable hand injury. In February of 2012, the E/C sought to compel claimant's attendance at their IME, alleging that a dispute existed regarding the authorized doctor's "*excessive PIR and work restrictions…the extent of disability, the applicable diagnoses and treatment*". The JCC found the E/C established a dispute, as they stated more than "speculative concerns". The DCA examined their prior holding in Lehoullier v. Gevity/Fire Equipment Svcs.(2010) and repeated that *"To create a dispute concerning medical benefits, an E/C is required to deny a claimant's request for medical benefits. Simply expressing unilateral speculative concerns over a claimant's progress with an authorized physician is insufficient."* They noted the relevant inquiry concerned the E/C's failure to deny a benefit prior to seeking the IME, as a dispute under the Lehoullier holding should be a "*legal dispute cognizable under the FL WC law"*.