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CASE NOTES

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

Meyers v. Hillsborough County (Fla.1st DCA 4/28/08)
In a fairly surprising opinion, the Court reversed finding that a "new" PTD claim was barred by res judicata. The claimant had previously filed for PTD and been denied. Rather than filing a Petition to Modify the prior Order, the claimant filed a new PFB for PTD after being denied the benefits in an order. The court finds that prior PTD denial "did not go to the entire merits of future disability claims", and found that res judicata did not apply. The court cited to prior cases dealing with wage loss benefits, which seem to comport with the notion that res judicata can't bar a subsequent claim for such benefits. However, the court doesn't really address that the status of PTD is supposed to be "permanent" or how a future petition would present different evidence of a permanent condition, especially coming several weeks or months after the JCC considered such evidence.
http://opinions.1dca.org/written/opinions2008/04-23-08/07-0229.pdf

Court reaffirms JCC's power to tax costs against non-prevailing party, dismisses arguments re. JCC power, waiver and that it is against public policy
http://opinions.1dca.org/written/opinions2008/04-23-08/07-3484.pdf

reverses order dismissing claimant's claim as claimant was unrepresented when signing a prior release

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http://opinions.1dca.org/written/opinions2008/04-23-08/06-5889.pdf

Ferrell Gas and Gallagher Bassett Services, Inc. v. Childers, 33 F.L.W. D957 (Fla. 1st DCA April 7, 2008)

The First DCA affirmed the JCC's finding of PTD in a new law case, based on the claimant's vocational abilities in connection with his physical limitations. The employer/carrier had defended the PTD claim on the basis that the claimant was physically capable of sedentary work. The First DCA rejected this position and compared the current statute to the pre-1994 PTD standard which provided for PTD based on physical restrictions and vocational factors which combined to preclude the level of work provided in the statute. The First DCA recognized a combination of both physical and vocational factors in proving permanent total disability. This is the second appellate decision to interpret the 2003 PTD standard, giving more guidance than the opinion in Wal -Mart Stores, Inc. V. Thompson, which was rendered in February of this year. Childers approves the medical/vocational analysis, and highlights the importance of having solid vocational testimony to defend a PTD claim.

Kramer v. Palm Beach County, 978 So.2d 836 (Fla.1st DCA 2008)

A bridge tender parked his car at a nearby shopping center, instead of the designated bridge tender's parking area. A majority of the employees, including supervisors, parked at the shopping center where the claimant had parked instead of the designated parking area. The claimant tripped on a pile of debris, on a county right of way, as he walked from the shopping center to the bridge house to begin his shift. The JCC denied compensability based on the going or coming rule of §440.092(2), Fla. Stat. (2004). The JCC indicated that if the claimant had parked in the designated area, he would have avoided the off-site hazard. The JCC held the accident was not compensable and found the special hazard exception to the going or coming rule inapplicable. The First DCA applied the two-prong test of the special hazard doctrine. First, they reasoned the pile of debris was "inherently dangerous", thereby satisfying the first prong (the presence of a special hazard at a particular off-site location). Second, they reasoned the route taken by the claimant was the usual or expected means of travel, thereby satisfying the second prong (close association of the access route to the work premises). The First DCA remanded to the JCC to make specific findings as to whether the route was usual and whether the claimant was ever expressly prohibited from parking at the shopping center.

Belton v. ABC Distributing, Inc., 33 F.L.W. D930 (Fla. 1st DCA April 3, 2008)

The JCC entered an unsigned Order administratively closing the file and dismissing the pending petitions. The claimant appealed the Order. The First DCA dismissed the appeal for lack of jurisdiction. They reasoned that the unsigned Order, with no indication that it was mailed to the parties, was not an appealable Final Order. According to the DOAH website, counsel for the claimant withdrew and the case was stayed for (30) days to allow the claimant to obtain new counsel by an Order dated May 5, 2006. The Order administratively closing the file was apparently entered after no further action was taken in the claim. Subsequently, the JCC set aside the Administrative Order by a May 13, 2008 Order. This case would appear to be of more interest to the claimant's bar, than employer/carriers.

Kicklighter v. City of Jacksonville, 33 F.L.W. D106 (Fla. 1st DCA April 10, 2008)

JCC Dane found the claimant was able to engage in at least sedentary employment within a 50 mile radius of his residence and therefore, denied PTD benefits. The First DCA found the record did not contain competent substantial evidence which would support this finding. The First DCA remanded the case for entry of an Order awarding PTD benefits. A review of JCC Dane's underlying Order indicated that the claimant did offer a combination of medical and vocational evidence in support of his PTD claim. Accordingly, it does not appear from the facts of the case that the First DCA is

shifting the burden to the E/C to disprove PTD when claimed. Apparently, the First DCA found no competent substantial evidence to the contrary.

Ponce v. U-Haul Co. Of Florida, 33 F.L.W. D1050 (Fla. 4th DCA April 16, 2008)

The Fourth DCA denied the defendant's Motion to Compel Settlement in a personal injury case. They found the plaintiff's attorney did not have his client's "clear and unequivocal authority" to settle the case. Accordingly, they denied the defendant's Motion to Compel Settlement.

CTL Distribution, Inc. v. Wood, 979 So. 2d 402 (Fla.1st DCA 2008)

The claimant had been receiving PTD benefits since 1999. When he turned 65 years old in 2002, he then also became entitled to PTD supps. The supplemental benefits went unpaid and a petition was filed in 2005. Within 14 days, the carrier paid past PTD supps, with penalties and interest. Subsequently, the carrier made several bi-weekly indemnity payments of PTD, but apparently through inadvertence, failed to pay PTD supps. The carrier subsequently corrected the error on its own and began paying both PTD and supps. The claimant's attorney then filed a Petition for Attorney's Fees claiming entitlement for securing PTD supps. The JCC awarded an attorney's fee. The First DCA reversed. They reasoned the carrier did not deny the Petition for PTD supps, nor did they constructively deny the Petition. Rather, the carrier timely paid benefits pursuant to the Petition. The subsequent failure to pay PTD supps was remedied without involvement by the claimant's attorney. As such, the First DCA found there was no attorney's fee entitlement.