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CASE NOTES

CASE LAW SUMMARY
January 2008

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

Shepard v. Cordis, 971 So.2d 268 (Fla. 1st DCA, January 7, 2008)

The Claimant filed a Motion to Disqualify the JCC, based upon an "adversarial relationship" between the JCC and the Claimant's attorney . The Motion was denied. The First District Court of Appeals (1st DCA) held that the Claimant's Motion was legally sufficient, and remanded the case with instructions to enter an Order granting the Claimant's motion.

In making this decision, the 1st DCA referenced Walls v. State, 910 So.2d 432 (Fla. 4th DCA 2005), which upheld a motion to disqualify the JCC based upon an "acrimonious relationship" between the JCC and the Claimant's attorney in an unrelated matter/claim. The 1st DCA believed that if the basis of the Motion in the Walls case was legally sufficient when based upon a relationship in an unrelated matter, then the Claimant's basis in the Shepard case would be legally sufficient because it was based upon the Claimant's personal claim.

Luedke v. Play Space Svcs, 971 So.2d 261 (Fla. 1st DCA,

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January 7, 2008)

F.S. § 440.185 (2008) states that the Claimant must provide his/her employer with notice of the Claimant's injury within 30 days after it occurs. Several exceptions exist, and the court analyzed the exception found in F.S.A. § 440.185(1)(b), known as the medical opinion exception/exemption. Subsection (1)(b) states that a Claimant does not have to notify his/her employer within 30 days after the injury occurs, if the Claimant's injury could not be identified without a medical opinion, and if after obtaining the medical opinion, the Claimant notifies the employer that the injury arose out of the course and scope of employment.

The Claimant did not notify the employer of his injuries within 30 days, and argued the above exception applied , asserting that he was born with spina bifida and believed his symptoms to be symptoms of that disease. He also claimed that it was only after going to the doctor and being told that his symptoms were unrelated to spina bifida, that he became aware that the injuries were work related. The E/C argued that the Claimant admitted that he had suffered neck pain in the past, and he was able to associate that pain to work. The E/C also argued that the Claimant failed to present evidence to show how his symptoms could have been a result of spina bifida or some other condition that would have required a medical opinion to identify whether or not they were work related.

The 1st DCA affirmed the ruling in favor of the E/C, finding that is was within the JCC's discretion to weigh the credibility of the claimant, and to determine that the neck pain described by the Claimant was recognizable to a lay person as being related to work without the need for a medical opinion.

Roberson v. St. Johns County School Board, 2008 WL 182207 (Fla. 1st DCA, January 23, 2008)

This case addresses F.S. § 440.19 (2008), which govern the statute of limitations (SOL) for workers' compensation claims. The Claimant filed a workers' compensation claim and the E/C accepted compensability. The E/C later issued a denied the claim, stating that the Claimant's disability was due to pre-existing conditions rather than the work accident. The following day, the E/C filed a notice with the Division of Workers' Compensation and with the Claimant, indicating that the Claimant was assigned a Permanent Impairment Rating (PIR) of 0%. Three weeks later, the E/C received notification from the Claimant's physician that the Claimant had reached MMI (maximum medical improvement), and had been assigned a PIR of 10%. The E/C did not notify anyone of this change.

When the Claimant learned of the 10% PIR, a Petition for Benefits (PFB) was filed, but the SOL had lapsed on the Claimant's ability to file that PFB. The E/C denied the claim, defending on the grounds that the Claimant was barred from filing a PFB. The JCC upheld the E/C's denial, and the Claimant appealed.

The Court considered whether the E/C was estopped from using the SOL defense. The Claimant argued that the E/C should not be allowed to use the defense because the Claimant was able to meet his evidentiary burden. The Claimant showed by clear and convincing evidence that (1) the E/C made a misrepresentation of material fact, by failing to notify anyone of the 10% PIR change, (2) the Claimant relied upon the misrepresentation, by not filing a PFB sooner, and (3) the Claimant's reliance on the misrepresentation caused detriment to the Claimant, by causing the SOL to elapse. The E/C argued that there was no duty to notify anyone of the PIR change because the claim had been denied in its entirety.

The 1st DCA ruled for the Claimant, and reversed and remanded the claim to the JCC to allow the Claimant to file a PFB.

This is a case appears to impose a duty on the E/C to notify parties if they receive evidence that a "material fact" has changed.

Churchville v. GACS Inc., 2008 WL 182203 (Fla. 1st DCA, January 23, 2008)

The Claimant was involved in 2 work accidents, one on February 5, 1996, and the other on December 3, 1997. In 1996 the Claimant was employed as a carrier driver for Commercial Carrier, and in 1997 the Claimant was employed as a carrier driver for Allied Systems. The Claimant was injured on both occasions while unloading vehicles for transport. In 2000, the Claimant and his attorney settled his workers' compensation cases. Included in the settlement papers was a general waiver and release, which the Claimant signed.

The Claimant had previously filed a personal injury/tort action against GACS in June of 1999, and an amended complaint in February of 2000. It should be noted that the Claimant signed his worker's compensation release after the original and amended complaint in his tort action were filed.

GACS was the surviving corporation following a series of mergers. The mergers resulted in Allied (the Claimant's employer during his second accident), and GACS becoming sister companies. Upon appeal, the 1st DCA was confronted with the issue of whether the general release and waiver that the Claimant signed following the settlement of his workers' compensation cases, released GACS from liability from the Claimant's pending tort action.

The Claimant argued that GACS was not an "affiliate" of Allied. There was much argument on the meaning of the word "affiliate," as the release that the Claimant signed released all "subsidiaries, affiliates, and parent companies" from further litigation. The Claimant presented definitions of "affiliate" that defined it to include "subsidiaries" and "parent companies" only. GACS and the 1st DCA looked to Black's Law Dictionary, which encompassed "sister companies" in the definition of "affiliate." The Claimant also argued that the term "affiliate" was ambiguous. The Court found that the term was not ambiguous, and when looking at the term in the context in which it was used, they held that the E/C intended the release to encompass sister companies since they specifically mentioned "subsidiaries" and "parent companies" separately.

The Claimant also argued that the workers' compensation release did not intend to address actions in tort. GAC and the Court pointed to the wording of the release, and noted that the phrase "release included, but not limited to claims, rights, and causes of action in tort," clearly intended the release to cover tort actions. The Court also noted that the phrase "wishes to waive all claims arising from his employment," addressed the issue since the Claimant's personal injury action arose out of his employment.

The 1st DCA held in favor of GACS, and stated that the release the Claimant signed did release GACS from liability in tort. The Court pointed out that although they recognized that the release may have been harsh, it is not the role of the Court to re-write a contract. Summary Judgment was affirmed in favor of GACS.