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**FLORIDA LAW WEEKLY**

Week of January 6, 2012

**P & I**

Ballard vs. Edd Helms Group, 37 Fla. L. Weekly D58 (Fla. 1<sup>st</sup> DCA  
December 30, 2011)

The JCC denied the claimant's request for TPD from 6/12/09 through 8/14/09 because the authorized doctor opined the claimant was on a no-work status during that time. The claimant would have been entitled to TTD, but he received unemployment during that period. The First DCA held the JCC did not err in denying P & I on those benefits.

The E/C did not raise the issue of overpayment until written closing arguments. The JCC found the E/C was entitled to an overpayment and directed that a penalty due for late payment of interest for a different time period be deducted from the overpayment.

The court held the JCC erred in finding an overpayment of TPD because it was not timely raised and erred in reducing the overpayment by the amount owed in penalties. The JCC also erred

in denying attorney's fees on the successful prosecution of the claim for penalties on the late payment of interest.

**PTD**

Diocese of St. Petersburg v. Cayer, 37 Fla. L. Weekly D60 (Fla. 1<sup>st</sup> DCA December 30, 2011)

The JCC found the claimant PTD at trial following his 2005 and 2008 industrial accidents. The issue on appeal was concerning language placed into the JCC's order. The JCC referenced on a few occasions in her order that the claimant was PTD because he "cannot do the full range of sedentary employment..." according to the medical and vocational evidence.

The 1<sup>st</sup> DCA noted that the phraseology of "engage in a full range of sedentary activities" is akin to the fifth step of the SSA sequential analysis for determining PTD under the pre-10/1/03 statute. The language of the post-10/1/03 statute contains the test of "inability to engage in at least sedentary employment." The court reversed since the JCC's order was unclear as to which standard was used.

**EMA**

Arnau v. Winn-Dixie Stores, 37. Fla. L. Weekly D63 (Fla. 1<sup>st</sup> DCA December 30, 2011)

The authorized physician opined an evaluation by a thoracic surgeon was medically necessary, while the E/C's IME opined the evaluation was not. The E/C moved for an EMA, who concluded the evaluation was medically necessary. The JCC denied the claim for an evaluation by a thoracic surgeon, but did not identify specific evidence justifying rejection of the EMA's opinion. As a result of the failure to identify any evidence or articulate clear and convincing evidence that would support rejection of the EMA opinion, the order was reversed for further findings.

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