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Compensability/One Time Change

Falcon Farms/Travelers v. Maria Espinoza, 37 Fla. L. Weekly D489 (Fla. 1st DCA February 23, 2012)

The JCC awarded the Claimant a one time change in physician, and simultaneously denied compensability of the accident. On appeal, the E/C argued the Claimant was not entitled to a change in physician as her condition was not work related. The Claimant cross-appealed and argued the JCC's finding of non-compensability was legally inconsistent with his award of a change in physician.

The 1st DCA affirmed the JCC's finding as to compensability without addressing the merits of the Claimant's cross-appeal. The court held the Claimant did not preserve her argument for appellate review by failing to present her argument at rehearing.

The court also reversed the JCC's award of a one time change in physician, finding the plain language of Section 440.134(10)(c), Florida Statutes, requires that the injury be a "work-related" injury before a change in physician can be awarded under Section 440.13(2)(f), Florida Statutes.