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FLORIDA LAW WEEKLY

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CONTINUANCE DUE TO WITHDRAWAL OF CLAIMANT'S COUNSEL:

Banks v. Allegiant Security/Zurich American Insurance Ins. Co.,
38 Fla. L. Weekly D2154, (Fla. 1st DCA October 11, 2013).

After filing a Petition for Benefits and a Pretrial Stipulation, the Claimant's attorney withdrew as counsel. At the time the JCC granted the withdrawal, a Final Hearing was scheduled to take place seven weeks later. The Claimant was then sent a letter by the JCC, advising her to seek representation as soon as possible and that she must attend the Final Hearing, regardless of whether she became represented.

The Claimant then appeared at the Final Hearing without counsel. At the hearing, she stated that she had been unsuccessful in finding another attorney and requested a continuance for an additional two weeks to find an attorney. The attorney for the E/C objected to the continuance on the ground the Claimant had been previously notified of the need to find new counsel.

The JCC then questioned the Claimant regarding the circumstances giving rise to the need for the continuance. Apparently, the primary concern of the JCC, per his questioning, was meeting the time requirements set forth in § 440.25 (i.e. the Final Hearing must be held within 210 days of the PFB being filed). The JCC then denied the Claimant's request, due to the statutory time constraints. The Final Hearing proceeded with the Claimant Pro Se. The attorney for the E/C presented no live witnesses and conducted no cross examination of the claimant. The JCC then entered a Final Compensation Order denying the benefits claimed in the Petition. The Claimant appealed.

The 1st DCA reversed and remanded, holding the time frames are "neither inflexible nor inviolable." The statute specifically grants the Claimant power to waive the time frames for good cause shown. Further, continuances may be granted if necessary due to circumstances beyond the Claimant's control. The record did not reflect that the JCC considered that the time frames were subject to waiver by the claimant or that there were circumstances were beyond the Claimant's control. Without such findings, the Order must be reversed and remanded as the JCC failed to provide a sufficient basis to deny the continuance.

JEF/rls