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**FLORIDA LAW WEEKLY**

Week of April 4, 2014

**Workers' Compensation- Administrative Law- Penalties-Late  
Payment of Compensation**

**Alachua County School Board v. Office of the State of Florida,  
Chief Financial Officer for DFS, Div. of Worker's Compensation**

The Alachua County School Board challenged a DFS final order imposing a \$200 workers' compensation-related administrative penalty. The School Board's argument was mainly that DFS lacked jurisdiction to impose the penalty without first referring the case to a JCC, pursuant to Florida Statute Section 440.021.

The parties stipulated to the facts. Specifically, DFS audited the School Board's workers' compensation claims-handling practices and found 177 "late payments." Accordingly, DFS issued a final audit report and assessed penalties totaling \$15,300, which the School Board paid. However, the School Board

reserved the right to challenge two of the late payments, totaling \$200. The School Board filed a petition and jurisdiction was determined to lie with DFS. A department hearing officer conducted an informal hearing and a final order was entered rejecting the School Board's jurisdictional argument and ordered it to pay the \$200 penalty. The School Board appealed.

The 1<sup>st</sup> DCA affirmed the final order with respect to the payment of the \$200 late payment penalty without additional comment. The focus of the decision was whether or not DFS had jurisdiction to impose penalties without a referral to the JCC.

The 1<sup>st</sup> DCA noted that neither party disputed DFS's basic authority, as articulated in F.S. Section 440.20(8)(b), to audit and impose penalties for non-compliance and late payments. However, the parties disagreed on the applicable process required when penalties were disputed. The School Board argued that Section 440.021 requires matters involving disputed penalties to be referred to the JCC. DFS argued that its audits do not equate to adjudications of employee benefits claims, which would fall under JCC jurisdiction. Instead, DFS took the position that 440.525(2) allows DFS to audit claims-handling entities, such as the School Board, and allows it to impose penalties when applicable.

The 1<sup>st</sup> DCA first explained that the two applicable statutes, Section 440.525 and 440.012, could be read together to make available both a DFS audit that focuses on the underlying report and a JCC review when the parties dispute the actual amount of the assessed penalties.

The Court explained that in the case at issue, the School Board was not challenging the amount of the penalties, but rather the underlying merits of DFS's findings. Accordingly, Section 440.525 was the applicable statute and a referral to JCC was not required.

## **Workers' Compensation - Settlement**

Cabrera v. Outdoor Empire Inc.

A pro se claimant challenged three JCC orders, which in their totality, concluded the claimant fully settled his two workers' compensation claims. The 1<sup>st</sup> DCA found that the record evidence supported the JCC's finding and therefore affirmed.

The claimant had two separate industrial accidents with the same employer. The case previously came in front of the appellate court (Cabrera I) and the 1<sup>st</sup> DCA concluded the claimant, who was unrepresented at the time, successfully withdrew from the settlement before it was approved by the JCC, as required for an unrepresented claimant. The claimant then obtained representation and the parties attended a mediation where the claimant agreed to settle both claims for \$165,000. The settlement agreement was memorialized by written documents, both of which contained the claimant's signature. Shortly after, the claimant expressed displeasure with the settlement.

The claimant claimed he was tricked into the settlement and did not intend on settling both accident dates. The JCC held evidentiary hearings, where the mediator, the interpreter, and claimant's former counsel testified that the negotiations at mediation and the resulting settlement agreement included both dates of accidents. Moreover, the claimant affirmed that his signature appeared on the settlement documents. The JCC entered an order concluding the claimant fully and completely settled both dates of accident and "any and all" other dates of accident with the employer. The JCC also found no evidence of overreaching or fraud committed against the claimant. After the JCC issued its order, the claimant then alleged, for the first time, that the signatures on the settlement documents were not his own. The JCC advised the claimant that the proper time to have raised that argument was during the hearing and he was therefore estopped from raising that argument now. The claimant appealed, arguing his constitutional rights were violated and that he did not settle both dates of accident.

Upon receipt of the claimant's initial brief, the Court entered an order advising the parties that the appeal was being considered for summary affirmance and no further briefing was required. The Court explained that summary affirmance is appropriate where the appellant's initial brief fails to present a preliminary basis for reversal. The Court then reiterated that it will never reverse an order of a lower tribunal merely because evidence supports the losing party's view of the case and that the standard of review in workers' compensation cases is whether competent substantial evidence supports the decision below.

Because the Court found that an abundance of evidence supported the JCC's finding and order, it affirmed its finding that the claimant settled both accidents. Moreover, the Court stated the claimant did not timely raise his argument regarding his signature and that even though he was unrepresented during the evidentiary hearings, he was still bound by the same rules that apply to counsel. Additionally, with respect to the claimant's constitutional argument, the Court found that the claimant failed to refer to any specific constitutional guarantees or provisions that were violated. Accordingly, the Court found the claimant failed to meet its burden of demonstrating an error. It specifically cited to Lynn v. City of Ft. Lauderdale, which explained a litigant fails to fulfill his duty of demonstrating reversible error by merely posing a question and then "dumping the matter into the lap of the appellate court for decision." Accordingly, the JCC orders were affirmed.