

**RISSMAN, BARRETT, HURT,
DONAHUE & McLAIN, P. A.
ATTORNEYS AT LAW**

STEVEN A. RISSMAN
ROBERT C. BARRETT
JENNINGS L. HURT III
ROBERT A. DONAHUE
JOHN E. McLAIN III
RICHARD S. WOMBLE
STACIE B. GREENE
THEODORE N. GOLDSTEIN
RAYMOND A. LOPEZ
VANCE R. DAWSON
RICHARD B. MANGAN JR.
HENRY W. JEWETT II
DANIEL M. POLLACK
ART C. YOUNG
NICOLE D. RUOCCO
DANIEL T. JAFFE
BEATRIZ E. JUSTIN
GREGORY GIANNUZZI
DAVID K. BEACH
F. DEAN HEWITT
EDWARD M. COPELAND IV
DAVID R. KUHN
G. WILLIAM LAZENBY IV
R. CLIFTON ACORD II
ROBERT D. BARTELS
JILL M. SPEARS
JEFFREY J. KERLEY
KARISSA L. OWENS

OF COUNSEL
ROBERT J. JACK
JOHN P. DALY

EXECUTIVE DIRECTOR
W. SCOTT PETERSON

201 EAST PINE STREET
15TH FLOOR
P.O. BOX 4940
ORLANDO, FLORIDA 32802-4940
TELEPHONE (407) 839-0120
TELECOPIER (407) 841-9726
ORLANDO@RISSMAN.COM

TAMPA COMMONS
ONE NORTH DALE MABRY HIGHWAY
11TH FLOOR
TAMPA, FLORIDA 33609
TELEPHONE (813) 221-3114
TELECOPIER (813) 221-3033
TAMPA@RISSMAN.COM

709 SEBASTIAN BOULEVARD
SUITE B
SEBASTIAN, FLORIDA 32958
TELEPHONE (772) 228-3228
TELECOPIER (772) 228-3229
SEBASTIAN@RISSMAN.COM

WWW.RISSMAN.COM

PLEASE REPLY TO: ORLANDO

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AMY L. BAKER
AMANDA L. BRUS
STEVEN B. BURREG
DEREK J. BUSH
SEAN M. CROCKER
CHRISTOPHER E. DENNIS
SARAH E. EGAN
JAMES E. FAVERO III
SUSAN R. FULLER
PAUL B. FULMER
JANNINE C. GALVEZ
ELISE J. GEIBEL
CHRISTOPHER A. HANSON
VICTORIA S. LUNA
LAURA F. LYTLE
ERIC F. OCHOTORENA
JEREMY T. PALMA
JEFFREY M. PATNEAUDE
D. BLAKE REHBERG
KELLEY A. RICHARDS
RICHARD B. ROBBINS
JUAN A. RUIZ
GREG R. SCHMITZ
BRYAN R. SNYDER
LARRY D. SPENCER
MEREDITH M. STEPHENS
ELIZABETH M. STUART
F. PAUL TIPTON
NICOLETTE E. TSAMBIS
JASON R. URBANOWICZ
MEGHAN C. WHISENHUNT
CHRISTINE V. ZHAROVA

FLORIDA LAW WEEKLY

Week of January 27, 2012

Modification of award - Mistake of Fact

AMS Staff Leasing, Inc. v. Giraldo, 37 Fla. L. Weekly D6215 (Fla. 1st DCA January 24, 2012)

The First DCA reversed the JCC's modification of a 2008 Merit Order, awarding the claimant additional TPD benefits based upon a mistake of fact. Since the claimant's evidence in support of his claim for modification was previously offered and available at the time of the original proceeding and entry of the original order, it was insufficient to show a mistake of fact.

In limited situations, a petition based upon a mistake in determination of fact may be brought when material evidence that adds something new, which could not have been discovered at the time of the original proceeding and entry of the original order, becomes available after the entry of the order. Here, the claimant's appropriate remedy was to file a Motion for Rehearing.

Notice

Moya-Perguero v. Trucks and Parts of Tampa, Inc., 37 Fla. L. Weekly D215 (Fla. 1st DCA January 24, 2012)

The JCC erred in sua sponte dismissing the claimant's PFB after a hearing on a motion for sanctions requesting only attorney's fees, as parties are entitled to notice of the issues to be determined at a hearing.

Compensability - Pre-existing condition - MCC

Federal Express v. Lupo, 37 Fla. L. Weekly D216 (Fla. 1st DCA January 24, 2012)

The JCC erred in finding that aggravation of a pre-existing ankle injury caused by the claimant's employment was the MCC of his current need for treatment where, although the EMA opined that the employment was the MCC of permanent aggravation to the preexisting condition, the EMA also opined that the MCC of the need for ongoing treatment was the pre-existing condition, not the job-related aggravation. Thus, the JCC impermissibly rejected the EMA's opinion and failed to articulate clear and convincing evidence to do so.

LDS