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PLEASE REPLY TO:

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**Workers' Compensation - PTD - Incomplete earnings report form -
Suspension of benefits**

Glinksi v. Pan American Bank, 36 Fla. L. Weekly D2709 (December 16, 2011)

The claimant had been receiving PTD benefits since 1990. On August 26, 2009, the employer/carrier provided the claimant with a DWC-19 (Earnings Report Form). Pursuant to Fla. Stat. § 440.15(1)(e), the claimant had 21 days to complete and return the form. The claimant returned an incomplete form on September 21, 2009. The employer/carrier requested another completed form, but the claimant did not immediately comply. The employer/carrier therefore suspended her benefits on December 21, 2009. When the employer/carrier received a full and complete earnings report from the claimant on January 15, 2010, they reinstated her benefits.

The claimant filed a Petition for Benefits requesting PTD benefits for the period during which her benefits were suspended. The claimant attempted to explain her failure to completely report her earnings by stating that she had not taken her thyroid

medication. The JCC rejected her testimony and denied the Petition, finding that the claimant willfully failed to complete the earnings report. The claimant appealed, arguing there was no competent substantial evidence that her failure to complete the reports was willful. She also argued that the employer/carrier had no authority to suspend her benefits on its own when her entitlement to PTD benefits was adjudicated rather than administratively determined.

The First DCA rejected the claimant's arguments. First, there was competent substantial evidence that the claimant was in willful non-compliance of Fla. Admin Code R. 69L-3.021(2), which required her to return complete and return the DWC-19 within 21 days of receipt. Second, section 440.15(1)(e)2.b gave the employer/carrier the ability to suspend benefits for the time period where a claimant willfully fails to report her earnings. Finally, the employer/carrier was not required to seek permission from a JCC prior to suspending disability benefits previously awarded by judicial determination. (citing Holly v. Auld, 450 So. 2d 217, 219). The First DCA therefore affirmed the decision of the JCC.