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FLORIDA LAW WEEKLY

Week of July 6, 2012

Evidence /Successive Accidents

Tutor Time Child Care/Learning Centers and Gallagher Bassett Services, Inc., v. Laylita Patterson, 37 Fla. L. Weekly D1580 (Fla. 1st DCA July 3, 2012).

The E/C appealed four of the JCC's findings, two of which were affirmed without comment. The court first discussed the JCC's determination that Section 440.29(4), Florida Statutes (2008), is both a business record exception to the hearsay rule and an exception to the rule requiring authentication of documents.

Section 440.29(4), Florida Statutes, states "[a]ll medical reports of authorized treating healthcare providers relating to the claimant and subject accident shall be received into evidence by the judge of compensation claims upon proper motion," and if "served on the opposing party at least 30 days before trial." The court notes that this statutory provision, included in an extensive re-write of Chapter 440, was intended to streamline the evidentiary process and do away with the necessity of calling a records custodian. Affirming the JCC's determination, the court held that absent a bona fide dispute concerning the truthfulness of the records, requiring independent proof of authenticity, Section 440.29(4) is read not only to provide a hearsay exception, but also to satisfy authenticity requirements.

The E/C also challenged the JCC's failure to require the Claimant to prove that a second workplace accident did not break the chain of causation between the first accident and the benefits awarded. The appellate court held there was no need for the JCC to determine whether the second accident broke the chain of causation, as the E/C were the same for both dates of accident, the medical evidence established both accidents were industrial in nature, and Byszynski precluded a major contributing cause analysis.

Attorney Fees

Carmen Pineda v. Rio Pinar Health Care Centers/ESIS, 37 Fla. L. Weekly D1586 (Fla. 1st DCA July 3, 2012)

Under this May 16, 2008 date of accident, the JCC awarded claimant's counsel an E/C paid fee using the rule 4-1.5(b) factors laid out in Murray v. Mariner Health, and without reference to the guideline fee formula set out in Section 440.34(1), Florida Statutes (2007). The claimant appealed, arguing Section 440.34(1) was the proper starting point for an attorney fee calculation. The JCC's Order noted that a guideline fee on benefits secured was \$45,608.94, for an hourly fee of \$570.11. The JCC awarded \$25,000.00, for an hourly fee of \$312.50.

The appellate court held that the JCC correctly applied the holding of Murray. The Murray decision plainly states that "reasonable attorney fees for claimants, when not otherwise defined in the workers' compensation statute, are to be determined using the factors of rule 4-1.5(b) of the Rules Regulating the Florida Bar."