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Repetitive trauma

Rose v. Geico, 37 Fla.L.Weekly D1377 (Fla. 1st DCA, June 13, 2012).

The claimant appealed an order of the JCC denying the compensability of a repetitive trauma claim. It was noted that the parties were previously before the First DCA on the issue of whether the statute of limitations expired regarding her compensable bilateral carpal tunnel syndrome claim for a 1999 date of accident. At that time, the Court reversed the JCC's finding that she sustained a new repetitive trauma in 2008. Thereafter, the claimant filed a new Petition for Benefits alleging she sustained trauma to her hands using a February 2010 date of accident.

In regards to the February 2010 date of accident, the JCC denied the claim based on Dr. Fiore and Dr. Goldsmith indicating that although the claimant suffered from carpal tunnel syndrome her symptoms were similar to the symptoms she had back in 2007. Specifically, the JCC indicated,

"there would be no objective findings that would support a change in condition since 2007."

The First DCA noted the JCC used an incorrect legal standard in finding she needed to show a change in condition. The Court stated no change in condition needed to be shown as she alleged a subsequent repetitive trauma and each new exposure to the trauma was a new accident per Florida Statute §440.09(1). Nothing in the statute placed a burden on the claimant to prove that her condition changed or somehow worsened. The correct standard was to show by clear and convincing evidence an accident occurred and was established to a reasonable degree of medical certainty based on objective relevant medical findings. The claimant testified unchallenged that her work activities throughout her employment involved a great deal of data entry, typing and use of a mouse beginning in 2008 and continuing through 2011.

The Court went on to state that it was uncontradicted that the claimant was diagnosed with bilateral carpal tunnel syndrome and suffered a recurrence of the condition, ongoing since 1999, which was established within a reasonable degree of medical probability and the major contributing cause of her present recurrence of symptoms was her typing activity. Accordingly, the claimant met her burden to prove that the injury and its occupational cause, was established within a reasonable degree of medical certainty based on objective medical findings. Therefore, the JCC erred in denying the claim for authorization of treatment for the claimant's bilateral carpal tunnel syndrome and likewise erred in denying attorney's fees and costs.

Hypertension

Williams v. City of Orlando, 37 Fla.L.Weekly D1378 (Fla. 1st DCA June 13, 2012).

The claimant appealed an order of the JCC denying compensability of her hypertension on the grounds that she failed to establish eligibility to rely on the statutory presumption of occupational causation via section 112.18. The Employer/Carrier conceded that the claimant met three of the four requirements by being a police officer whose condition resulted in disability and who successfully passed a physical examination upon entering service. The

fourth statutory requirement was that the condition be one listed in section 112.18, which includes tuberculosis, heart disease or hypertension.

The JCC found the claimant failed to prove the final requirement, even though the claimant was diagnosed with "essential" hypertension and introduced unrefuted medical opinion testimony that essential hypertension is the same condition as arterial hypertension. The First DCA noted that it previously held that arterial or cardiovascular hypertension met the requirement of section 112.18. The Court went on to say that the JCC is permitted to reject unrefuted medical testimony if there is a valid reason, as to permit appellate review, although the JCC's reason was based on an incorrect understanding of Bivens and Thomas. The First DCA ruled that because the JCC's understanding of the case law was inaccurate, the JCC's rejection of the unrefuted medical testimony was unfounded.

The Court stated that Bivens does not hold that essential hypertension is not covered. In fact, Bivens was decided on there being no recorded evidence that the JCC could rely on to support a finding that the hypertension was arterial or cardiovascular. Bivens does not preclude a claimant from attempting to meet his burden to prove that whatever form of hypertension he has is in fact arterial or cardiovascular hypertension. Therefore, Bivens is limited to its own facts. Here, there was evidence that the claimant's essential hypertension was in fact arterial hypertension and the JCC erred in denying compensability based on a misunderstanding of case law.

Permanent and total disability

Berman v. Dillard's, 37 Fla.L.Weekly D1409 (Fla. 1st DCA June 14, 2012).

At the age of 72, the claimant suffered a compensable injury in 2004 and was administratively accepted as PTD at the age of 74. In 2011, the Employer/Carrier suspended her PTD benefits stating her entitlement to such benefits ended. The JCC found that because the claimant was over the age of 70 when she was injured and received PTD benefits for five years after her administrative acceptance that she exhausted her entitlement to PTD benefits pursuant to section 440.15(1)(b).

The claimant argued that allowing PTD benefits to end under the statute discriminated against her on the basis of age and violated her right to access of court. She also argued her claim should be subject to strict scrutiny. The First DCA noted that the Florida Supreme Court previously ruled that the rational basis test is the proper standard of review as "age limitations and restrictions may survive a constitutional challenge and be enforced if they pass the rational basis test." The Court then rejected the claimant's argument that the strict scrutiny standard applied to her age discrimination claim.