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COMPENSABILITY

Valerie Walker v. Broadview Assisted Living and Chartis Claims, Inc., 37 Fla. L. Weekly D1870 (Fla. 1st DCA August 8, 2012)

As part of her job the claimant was requested by the employer to drop off a package at UPS. In anticipation of this she placed the package in her car. When UPS arrived at the employer the claimant went to her car, retrieved the package, and gave it to the UPS driver. As she was returning to her desk she turned a corner in the hallway, fell and injured the left shoulder. According to the record it was undisputed the claimant injured the left shoulder as a result of the fall at work and had no prior problems with the left shoulder. At the trial the JCC found the claimant had no pre-existing conditions that may have caused the fall. However, the JCC denied compensability because the claimant's accident and injury on the employer's premises did not arise out of her employment because the work activity at the time of the incident was not the major contributing cause of the fall or injury. The claimant then appealed.

In reversing and remanding the JCC's decision, the First DCA discussed the recent opinion in Caputo v. ABC Fine Wine & Spirits, setting forth the claimant's burden of proof for occupational causation. In Caputo, the First DCA found that in the absence of competing causes of the claimant's accident and injury she has satisfied the major contributing cause requirement.

In the case at hand since there were no competing causes of the accident and injury, the claimant's work activity was "de facto the major cause." The JCC erred in finding the claimant failed to establish that work performed within her employment caused her left shoulder injury.

REPETITIVE TRAUMA

Drexel Williams v. Tarmac America and ESIS-ACE U.S. Co., 37 Fla. L. Weekly D1923 (Fla. 1st DCA August 10, 2012)

The claimant drove cement trucks for the employer beginning in 1987. He began to have back pain following a work-related motor vehicle accident some time before 1990. In the 1990s, the employer/carrier began authorizing medical treatment for the claimant's back. On March 10, 2004, the claimant resigned from the employer because the continuous use of medications related to the back injury made it difficult for him to drive safely. After the claimant's resignation the employer/carrier continued to provide treatment.

In 2010, the claimant filed a petition for PTD benefits from March 10, 2004 forward. Although the PFB described the accident as repetitive trauma injury to the back with a date of accident of January 26, 2004, it did not raise the issue of compensability of the back. At the final merits hearing the JCC found the claimant had not proven the existence of a back injury due to repetitive trauma with a date of accident of January 26, 2004 and denied PTD benefits.

On appeal the claimant argued compensability of the back injury was never at issue. The First DCA agreed and found the JCC erred in making findings on matters outside the issues for the merits hearing. Compensability of the back was not put at issue in the PFB or pretrial stipulation and was not challenged by the employer/carrier. The First DCA further discussed that the employer/carrier's provision of medical care for the back, in the absence of a subsequent denial of compensability within 120 days of the initial provision of care, precludes any challenge to compensability of the condition. The First DCA reversed and remanded for a new hearing.

KAR/jab