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Average Weekly Wage

K-C Elec. Co. v. Walden,
38 Fla. L. Weekly D2097 (Fla. 1st DCA Oct. 7, 2013)

The E/C appealed an order by the JCC which adjusted the Claimant's AWW to include the pro rata portion of corporate profits that he was entitled to as a shareholder. The E/C argued the 1/1/94 amendments to the definition of wages distinguishes Pishotta v. Pishotta Tile & Marble, Inc., 613 So.2d 1373 (Fla. 1st DCA 1993), which previously allowed for the inclusion of corporate profits in a claimant's AWW if the profits were not received merely because of the claimant's status as owner, but rather, profits were derived almost entirely as direct result of his personal management and endeavor. The E/C's argument was because the 1/1/94 amendments added the language that wages had to be "reported for federal income tax purposes," wages should be limited to "wages" as defined under the federal tax code, and therefore, Pishotta should not control.

This argument was rejected. The Court did an analysis of the plan meaning of section 440.02(28), Florida Statutes, and

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held that the Legislature did not intend on limiting wages to only those wages as defined by the federal tax code. Since the definition of wages was not altered in the manner that the E/C suggested, Pishotta remained good law. A claimant's AWW includes his or her pro rata portion of corporate profits where the profits were "almost entirely the direct result of personal management and endeavor," and therefore were "earned" as required by the definition of "wages" in chapter 440. The only change from the 1/1/94 amendments requires that the corporate profits be reported for federal income tax purposes.