STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
PANAMA CITY DISTRICT OFFICE

Charles M. Peel, Jr., Claimant, vs. State of Florida Department of Corrections/Division of Risk Management, Employer/Carrier/Servicing Agent.	)	OJCC Case No. 07-008264LAR Accident date: 6/27/2005

FINAL COMPENSATION ORDER
FINDING COMPENSABILITY AND AWARDING CERTAIN BENEFITS

Upon proper notice, a hearing was held on Thursday, **November 8, 2007**, in Panama City, Bay County, Florida. Present at the trial were the Claimant, Charles Peel, Jr., and his attorney, Stuart A. Christmas, Esquire. Appearing on behalf of the Employer/Carrier was their attorney, Colleen Cleary Ortiz, Esquire. Live testimony was presented by the Claimant, Charles Peel, Jr., before the undersigned on the date of the trial, followed by closing arguments present by counsel for the respective parties.

On **November 20, 2007**, the undersigned announced her decision in favor of the Claimant by correspondence to counsel for the parties. Counsel for the Claimant was requested to prepare a Proposed Final Order. Thereafter, counsel for the Employer/Carrier was invited to, and did, submit comments and/or objections in response to the Claimant's Proposed Order. The undersigned has reviewed and considered the proposed order as offered by Claimant's counsel as well as Defense counsel's subsequent comments. The undersigned finds in favor of the Claimant, all as more particularly set forth below.

The Claimant sought the following benefits:

1. TTD benefits from 8/30/05 to 9/12/05 at correct AWW/CR.

2. Payment/reimbursement of medical services.

3. Medical care under the supervision of Dr(s): Board certified cardiologist, or other qualified physician, preferably Dr. J. Ben Craven in Dothan, Alabama.

4. Compensability of entire claim.

5. Penalties, interest, costs, and attorney's fees.

The Employer/Carrier defended on the following grounds:

1. Claimant's employment is not the major contributing cause of the need for treatment or indemnity benefits.

2. The incident which occurred on **June 27, 2005**, and the Claimant's heart condition, are personal in nature and did not arise out of or in the course of claimant's employment.

3. The Claimant's failure to comply with medical treatment and or recommendations has caused or worsened the Claimant's cardiovascular condition.

4. No PICA due.

The following exhibits were admitted into evidence:

COURT

1. The Pretrial Stipulation and Supplemental Pretrial Stipulation.

JOINT

1. Pre-employment physical.

2. Medical records from Chipley Medical Group, Dr. Wade Melvin.

3. Medical records from Southeast Alabama Medical Center.

4. Medical records from Northwest Florida Community Hospital.

5. Medical records from Dr. Thompson Maner with attached deposition and exhibits (9/26/07).

CLAIMANT

1. Petition for Benefits filed on March 26, 2007, the Employer/Carrier's Response filed on April 20, 2007, and the Notice of Denial.

2. The deposition of Dr. J. Ben Craven with attached Exhibits (6/26/07) offered for purposes consistent with Office Depot, Inv. v. Sweikata, 737 So.2d 1189 (Fla. 1st DCA 1999).

3. The deposition of Dr. Patrick Mathias with attached exhibits including the IME report (11/01/07).

EMPLOYER/CARRIER

1. The deposition of Dr. Michael A. Nocero, Jr., with attached exhibits including the IME report (11/02/07).

The Parties stipulated to the following:

1. The Judge of Compensation Claims has jurisdiction over the parties and the subject matter, and venue is proper in the A-Central District.

2. There was an employer/employee relationship on the date of the accident, June 27, 2005.

3. There was worker's compensation insurance coverage on the date of the accident.

4.Venue is in Chipley, Washington County, Florida.

3. There was timely notice of the pre-trial conference and the trial/final hearing.

4. The Employee/Claimant has an average weekly wage of $761.67 and a compensation rate $507.80.

5. The calculation of the average weekly wage and the compensation rate does not include health insurance benefits, which are being paid.

6. If benefits under Section 440.13, Florida Statutes, (medicals) are determined to be due or stipulated due

herein, the Parties agree that the exact amounts payable to health care providers will be handled administratively and medical bills need not be placed into evidence at trial.

7. Dr. Thompson Maner was authorized for care by the Employer/Carrier under the "120 day rule" prior to denial of compensability.

8. The Petition for Benefits, which is the subject of this hearing, was filed on March 26, 2007.

9. The Employer/Carrier filed its response to the Petition for Benefits on April 20, 2007.

The following witnesses testified in person at trial:

1. Charles M. Peel, Jr., Claimant.

After due consideration of this matter, and having considered the candor and demeanor of Claimant who testified before me as well as having had the opportunity to carefully review and consider the evidence submitted herein as well as the closing arguments of counsel, the undersigned Judge of Compensation Claims finds as follows:

1. In my determination herein, I have attempted to distill the testimony and salient facts together with the findings and conclusions necessary to the resolution of this matter. I have not necessarily attempted to completely summarize the substance of Claimant's testimony or the testimony of any deposition witness, nor have I attempted to state non-essential facts. Because I have not done so should not be construed that I have failed to consider all of the evidence.

2. The undersigned Judge of Compensation Claims has jurisdiction over the parties and the subject matter of this claim.

3. The stipulations and agreements of the parties either set forth in the Pretrial Compliance Questionnaire(s) filed herein or as announced on the record are accepted and adopted by this Court.

4. Any and all issues raised by way of the Petition(s) for Benefits or which are the

subject matter of the final hearing, but which issues were not tried at the hearing are presumed resolved, or, in the alternative, deemed waived or abandoned by Claimant and are therefore denied. *See* Betancourt v. Sears Roebuck & Co., 693 So. 2d 680 (Fla. 1st DCA 1997).

In making its FINDINGS OF FACT AND CONCLUSIONS OF LAW in this claim, this Court has carefully considered and weighed all of the testimony and evidence presented, including all live and deposition testimony, as well as exhibits, and have resolved any and all conflicts therein. The Court has also carefully observed the candor and demeanor of the Claimant, Charles Peel, Jr., who was the only live witness to testify and has resolved any conflicts in the testimony and the evidence. The Court finds that the Claimant was credible and his testimony was consistent with logic and reason. Furthermore, his testimony regarding the stressful nature and character of his employment was consistent with the testimony and opinions of Dr. Mathias who testified that several of his patients were correctional officers and he was familiar with the general duties of correctional officers. His testimony is also consistent with the testimony of Dr. Maner who was authorized by the Employer/Carrier to treat the Claimant and had knowledge of the occupational stresses encountered by correctional officers, several of whom he had treated. In this case, the opinions of the Claimant's expert, Dr. Patrick Mathias, the Employer/Carrier's expert, Dr. Michael Nocero, and Dr. Thompson Maner agreed in many areas, but likewise differed on some points. To the extent that the opinions were consistent, I accept that testimony from each physician. However, wherever the testimony may be in conflict, I accept the testimony and opinions of Dr. Patrick Mathias over that of Dr. Nocero and Dr. Maner as being more consistent with logic and reason when viewed in light of the totality of the medical evidence and facts of this claim. I further find Dr. Mathias' opinions to be supported by epidemiological studies widely accepted in the medical community, some of which were attached as exhibits to his deposition and received into evidence. The deposition of Dr. Ben Craven, the Claimant's personal physician, and attached exhibits were received into

evidence for factual purposes only. This Court sustained the Employer/Carrier's objection to the opinions expressed therein and have not considered any of Dr. Craven's opinions in making its findings and conclusions. Office Depot, Inv. v. Sweikata, 737 So.2d 1189 (Fla. 1st DCA 1999).

This Court also ruled on what essentially amounted to an *ore tenus* motion at the time of trial to amend the Employer/Carrier's first defenses by adding the words "or proximate cause" after the words "major contributing cause." The Claimant objected to the motion based on the timeliness and undue prejudice the Claimant would suffer if the motion were granted. This Court denied the motion at the time of the hearing and finds that the specific defense of "no proximate cause" was not raised in the Employer/Carrier's pretrial stipulation, any supplemental stipulation or Trial Summary. Furthermore, this Court finds that to grant the motion to amend defenses after completion of all discovery and submittal of pretrial stipulations and trial summaries on the day of the hearing would result in substantial prejudice to the Claimant.

In arriving at findings of fact and conclusions of law, the Court has rejected all of the evidence and inferences, which may be inconsistent with its finding and conclusions. After having carefully considered the testimony at the trial, as well as all of the evidence, the statute, and applicable case law, the Court makes the following determinations:

FINDINGS OF FACT

1. The stipulations of the Parties as to certain facts are proper, and are therefore, hereby approved and adopted by me.

2. The Claimant, Charles Peel, Jr., is forty three years of age. He began employment with the Department of Corrections as a Correctional Officer on **November 12, 1984** and has remained in continuous with the Department of Corrections since that date. This Court finds that the Claimant meets the definition of "correctional officer" for purposes of the application of presumption in Section 112.18 (1), Florida Statutes.

3. The requirements to enter employment as a corrections officer with the Department of Corrections as testified to by the Claimant were successful completion of the Basic Standards for Corrections Officers and a normal pre-employment physical. Prior to initiating his employment with the Department of Corrections the Claimant underwent a pre-employment physical on November 5, 1984. The examining physician indicated that the physical was normal. The Claimant testified that had he failed to meet either of the two requirements for entry into employment with the Department of Corrections he would not have been hired. Dr. Mathias testified that at the time the pre-employment physical was performed, the blood pressure reading would have been considered normal. He also testified that one isolated reading alone is not evidence of hypertension. He also stated that the isolated reading may be due to what is commonly referred to as "white coat syndrome" which is nervousness in a patient about the circumstances of their examination or the fact they are being seen by a doctor. He stated that before a diagnosis of hypertension is made, multiple recordings of elevated blood pressure are required. Dr. Mathias testified that the Claimant's EKG was within normal limits and that there was no evidence of heart disease at the time. The Claimant reported to Dr. Mathias a 10-year history of hypertension which would indicate a diagnosis in approximately 1997. The Claimant testified that he had no prior diagnosis of hypertension before his diagnosis which occurred in approximately 1997, well after his November 12, 1984, employment as a correctional officer. In accordance with State v. Reese, 911 So. 2D 1291 (Fla. 1st DCA 2005) a correctional officer is not required to have successfully passed a pre-employment physical revealing no evidence of the claimed condition to be entitled to the statutory presumption. Nevertheless, this Court finds that the Claimant successfully passed his pre-employment physical and, the pre-employment physical was normal and failed to reveal evidence of the claimed condition, more specifically, hypertension and heart disease.

4. The Claimant testified that on **June 27, 2005**, shortly before arriving at work, he developed severe indigestion and attempted to relieve the pain by use of antacids. Indeed, he stopped at a convenience store on his way to work to buy antacids. The pain did not subside and became of such a severe nature that after advising his supervisor, he left work and went to the emergency room, missing approximately six to seven hours of work. Upon arriving at the emergency room and following evaluation he was provided with a "gastric cocktail" and the pain eventually subsided. He was advised by the emergency staff that his EKG was abnormal and showed changes that could possibly be cardiac related. Dr. Mathias and Dr. Nocero testified that the Claimant had sustained a Q-Wave myocardial infarction at the time of emergency room visit on **June 27, 2005**. Dr. Mathias testified that based upon his condition that it would have been "medically necessary to take him out of work for several days." Emergency room medical records reveal that at the time of his emergency room visit on **June 27, 2005**, the Claimant had a significantly elevated blood pressure of 181/109. Dr. Mathias testified that based upon the elevated blood pressure alone, it would have been medically prudent to take the Claimant out of work until his blood pressure could be brought under control. The claimant was advised by the emergency staff that he should be admitted for further observation but refused admission and returned home.

Thereafter, the Claimant saw his primary care physician, Dr. Wade Melvin, on **June 30, 2005**, whose medical records have been entered into evidence. Dr. Melvin strongly advised the Claimant to proceed with a cardiac evaluation due to a mildly elevated troponin level and abnormal EKG. The Claimant returned to Dr. Melvin on **August 2, 2005**, and then again on **August 8, 2005** for follow-up. On **August 8, 2005**, the Claimant agreed to see a cardiologist and was referred to Dr. Benjamin Craven for evaluation.

Dr. Craven testified in his deposition that the Claimant underwent a cardiac catheterization on **September 2, 2005** which showed the presence of single vessel coronary

disease and mild segmental LV systolic dysfunction. Dr. Craven explained that this meant one of his three main arteries that go to the heart muscle sustained a high grade of stenosis. The Claimant's heart function, meaning the ability for the heart to eject blood, was mildly compromised at fifty percent. He also noted that the catheterization revealed that because of the blockage the Claimant had a "mild, sluggish impairment" in that area of the heart that the blocked artery served. During the catheterization the Claimant underwent a stent process of the proximal left anterior descending coronary artery, which was the blocked artery. Dr. Mathias testified that because of the claimant's coronary artery disease he had suffered a heart attack on **June 27, 2005**. He testified that the Claimant had an arrhythmia, which is irregular heart beats from the lower chamber of the heart and is common in people with coronary artery disease and hypertension. Dr. Nocero testified that the Claimant gave a history of "fluttering" of the heart, which Dr. Nocero interpreted as a possible arrhythmia. The Claimant testified that he did not have the symptoms associated with arrhythmia until after his **June 27, 2005**, heart attack.

5. This Court finds that the Claimant, a correctional officer, suffers from heart disease including coronary artery disease, arrhythmias, and hypertension which are conditions covered by Section 112.18 (1), Florida Statutes.

The Claimant testified that because of his chest pains and emergency room visit he missed 7 hours of work and as a result of his catheterization he missed 9 days of work. The definition of "disability" does not require a permanent incapacitation. My interpretation of the definition of "disability" pursuant to the rationale provided in City of Mary Esther v. McArtor, 902 So.2d 942 (Fla. 1st DCA 2005), is that "disability" is an incapacity to perform work, either on a temporary or permanent basis, and that disablement means the event upon which the employee becomes actually incapacitated, partially or totally, from performing his employment. Sledge v. City of Fort Lauderdale, 497 So.2d 1231 (Fla. 1st DCA 1986). The testimony establishes that

the Claimant was incapacitated due to his heart disease and hypertension and was unable to earn wages for the above described periods of time. Therefore, this Court finds that the Claimant has suffered "disability" as is contemplated under Section 112.18 (1), Florida Statutes.

6. This case involves heart disease and hypertension in a correctional officer, which have resulted in disability. Under these facts, I find that the presumption found in Section 112.18 (1), Florida Statutes applies and that the Claimant's heart disease and hypertension are presumed to be a result of the Claimant's employment unless the Employer/Carrier can demonstrate "a specific, non-work related event or exposure" as was required by the Florida Supreme Court in Caldwell v. Division of Retirement, 372 So. 2d 438 (Fla. 1979). The statute states that the presumption may be rebutted by "competent evidence." However, the Supreme Court in Caldwell, further elaborated on the nature and extent of the proof required. The Court stated:

> "The statutory presumption is the expression of a strong public policy which does not vanish when the opposing party submits evidence. Where the evidence is conflicting, the quantum of proof is balanced and the presumption should prevail. This does not foreclose the employer from overcoming the presumption. However, if there is evidence supporting the presumption, the employer can overcome the presumption **only by clear and convincing evidence**. In the absence of cogent proof to the contrary, the public policy in favor of job relatedness must be given effect..." Caldwell v. Division of Retirement, supra at 441.

At the time of his industrial accident, the Claimant was the supervising officer on the midnight shift. Such evidence included the testimony of the Claimant, Dr. Mathias and Dr. Maner. The Claimant testified that in his capacity he was locked within the prison with the inmate population. Neither he, nor any of the officers he supervised, carried firearms for protection. Those under his supervision dealt with most of the altercations that would arise and he would provide backup. There was a fifty-to-one ratio between inmates and officers. The Claimant described the environment as stressful when compared to normal life outside the prison. He testified that his position at the time of the accident was not as stressful as his duties

and responsibilities in his previous position with the employer. He described his work as an officer in Close Management as highly stressful. In his role as a corrections officer in Close Management, he was responsible for the care, custody, and supervision of offenders who could not be released into the general prison population due to violent acts or behavior. These prisoners were held in cells twenty-four hours a day, seven days a week, except to bathe and exercise two hours a week. He described various incidents including feces being thrown on him by prisoners and breaking up fights between inmates. Because of the dangers and risks related to his position, he found his work to be highly stressful. In both of the above-described positions, he received verbal abuse from inmates, which he found to be stressful.

Dr. Mathias, as a physician, was also familiar with the stressful nature of Claimant's work. He testified as follows:

> Q. And are you familiar with, in general, the duties of a corrections officer?
>
> A. Yes.
>
> Q. And how is that?
>
> A. I have seen several of them in my capacity as a cardiologist locally because the—I have a private practice in this area, and the Osceola County Facility is just—Corrections Facility is just four miles down the road on Sampson Road. So several of my patients are corrections officers.
>
> Q. And are you aware of any medical studies indicating a higher prevalence of hypertension amongst corrections officers?
>
> A. Yes.
>
> Q. And do you have the names of any of those studies?
>
> A. I would be happy to share them with you. There is a well-

> documented study from—conducted in Iowa that shows that law enforcement officers have a higher instance of hypertension. There is a study showing that ischemic heart disease mortality is higher among correction officers. Those are two articles that I have specifically relating to correction officers.

Dr. Mathias testified that these studies were published in peer-reviewed journals and were relied upon by the medical community. In his practice, he consulted and relied upon these studies. Furthermore, Dr. Mathias testified that there was a significant correlation between the development of coronary artery disease and hypertension with law enforcement and corrections occupations due to job stress or, as he termed it, psychosocial stress. This Court accepts his testimony regarding the same and finds that such testimony is supported by epidemiological studies, which are published in peer-reviewed journals and are relied upon by the medical community. This Court accepts the Claimant's testimony that the environment in which he worked was stressful or highly stressful. This Court recognizes the constant risk and danger associated with the duties of a correctional officer as described by the Claimant. This Court finds that the Claimant's testimony was consistent with and supportive of the types of psychosocial stresses described by Dr. Mathias. This Court finds that the medical testimony of Dr. Mathias and the claimant's testimony taken together support the application of the presumption. Therefore, this Court finds that the Employer/Carrier can only overcome the presumption by clear and convincing evidence as required by Caldwell.

7. Through the testimony of Dr. Nocero, the Employer/Carrier produced evidence regarding the Claimant's "risk factors" for the development of heart disease and hypertension. These risk factors included smoking and obesity. As to the hypercholesterolemia, Dr. Nocero could not give a "definitive answer" as to the Claimant's cholesterol, but knew that he had a current diagnosis. The Claimant testified that he had not been diagnosed with high cholesterol

before **June 27, 2005**. Dr. Nocero testified that hypertension was a risk factor for the development of coronary artery disease. Dr. Mathias testified that a risk factor is "...a factor or condition that is statistically corollate with the development of a disease." He described a cause as a factor that is absolutely related to the development of a disease. He stated, "For example, the cause of pneumonia is the pneumococcus. You take out the patient's – a piece of lung and you look under it; look under the microscope, you are going to see the bug. So it is clearly the cause." This Court accepts his definition of "risk factor" and "cause." Dr. Mathias testified that while there are known risk factors which are corollative with the development of heart disease and hypertension, there is no scientific means by which to identify the cause of coronary artery disease in an individual. Furthermore, there is no scientific or objective means by which to rank one risk factor as being more significant than another in an individual. The doctor explained that the Claimant had multiple risk factors for the development of his coronary artery disease, arrhythmia, and hypertension but that it was scientifically impossible to state the actual cause.

Dr. Maner also testified that he was unaware of any "scientific way" or of "any scientific evidence to ferret which of the risk factors produced the problem." He further stated that there was no scientific way to rank risk factors as "causative factors" in a particular individual. Dr. Nocero testified that an individual can have all the risk factors for developing heart disease and never develop it. He further testified that an individual can have none of the risk factors and develop heart disease. Dr. Nocero agreed that there was no scientific basis for determining the actual cause for the development of heart disease versus the risk factor. Dr. Nocero testified that the Claimant had primary or essential hypertension for which there is "no definitive causes with which we can say with any degree of medical certainty." This Court finds that Dr. Nocero's testimony and Dr. Maner's testimony is supportive of the opinions expressed by Dr. Mathias. To the extent that the opinions differ from that of Dr. Mathias, this Court accepts the testimony of Dr. Mathias for the reason previously expressed herein.

This Court finds that the identification of risk factors for the development of heart disease and hypertension in the Claimant without a showing of actual cause does not constitute clear and convincing evidence sufficient to overcome the presumption. This Court finds in the alternative that such a showing does not constitute competent evidence to overcome the presumption. This Court finds that the medical evidence presented demonstrates that there is no scientifically accepted method by which to identify the cause of the Claimant's coronary artery disease, arrhythmia, and essential or primary hypertension. This Court finds that the medical evidence presented demonstrates that there is not a scientifically accepted method by which to rank risk factors in the Claimant to identify the most significant risk factors for the Claimant's coronary artery disease, arrhythmia, and essential or primary hypertension.

The Employer/Carrier has raised a defense that the Claimant's failure to comply with medical treatment and or recommendations has caused or worsened the Claimant's cardiovascular disease. That defense is rejected. This Court has reviewed the medical records and more specifically those of Dr. Wade Melvin wherein the Claimant advised the doctor that he had discontinued use of his blood pressure medication in the past. The Claimant testified that he had discontinued use of his blood pressure medication for a period of time in **2000** due to some "side effects" that were affecting his marriage. He further testified that other than this two month period he had remained on his medication for his high blood pressure since having been diagnosed. This Court found Claimant to be a credible witness and accepts his testimony. This Court finds his testimony to be consistent with logic and reason. This Court has resolved any conflict in his testimony and the evidence.

Medical evidence shows that the Claimant agreed to a referral to a cardiologist on **August 8, 2005**. Thus, a little over a month had transpired since his **June 27, 2005** emergency room visit. The medical testimony establishes that the Claimant suffered a heart attack on the night of **June 27, 2005**. There is no medical evidence that his delay in proceeding with a

cardiology referral caused or worsened the Claimant's cardiovascular disease. Therefore, this Court rejects the defense as raised by the Employer/Carrier.

CONCLUSIONS OF LAW

WHEREFORE, based upon the foregoing findings of fact, the following represent the conclusions of law for these proceedings, and therefore it is the Order of the undersigned Judge of Compensation Claims that:

1. The Claimant sustained a compensable industrial accident, as defined in Chapter 440 of the Florida Statutes, on or about **June 27, 2005**, and is entitled to certain benefits as provided by law.

2. The Claimant's essential/primary hypertension and cardiovascular conditions are compensable pursuant to Florida Statutes §112.18 in conjunction with Chapter 440.

3. The Employer/Carrier shall authorize Dr. J. Ben Craven to provide the Claimant with continuing care and treatment, under the Florida Fee Schedule or Alabama Fee Schedule, whichever is greater. Alternatively, if Dr. Craven is unwilling to provide treatment pursuant to these fee schedules, the Employer/Carrier will locate and authorize a cardiologist to provide the Claimant with continuing care and treatment under the Florida or Alabama Fee Schedule.

4. The Employer/Carrier shall reimburse the Claimant's out-of-pocket costs for medical services related to the above stated conditions.

5. The Employer/Carrier shall pay 9 days of temporary total disability benefits for a period beginning **September 2, 2005**, the date of the Claimant's cardiac catheterization. These benefits shall be paid with penalties and interest.

6. The Employer/Carrier is responsible for the cost of the medical care and treatment provided to the Claimant relative to his hypertension and heart condition. Particularly, all portions of medical expenses paid for by the Claimant shall be reimbursed to the Claimant. However, this Court does not have jurisdiction or authority to require the Employer/Carrier to reimburse the health care provider. This Court can attribute responsibility but has no jurisdiction

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