STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ST. PETERSBURG DISTRICT OFFICE

John Connolly, Employee/Claimant, vs. Pasco County Board of County Commissioners, Employer, and Commercial Risk Management, Inc., Carrier/Servicing Agent.	)	OJCC Case No. 07-035893DSR Accident date: 6/1/2004

AMENDED FINAL COMPENSATION ORDER

THIS CAUSE was heard before the undersigned at St. Petersburg, Pinellas County, on the Employer/Carrier's Motion For Rehearing and Motion For Clarification filed September 2, 2008. The Claimant filed a Response on September 15, 2008, and a hearing was held on the Motion on September 16, 2008. After reviewing the pleadings, the Final Compensation Order dated August 22, 2008, hearing arguments of counsel, and being fully advised in the premises, I find that the Final Order should be amended.

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that the Final Order entered in this cause on August 22, 2008 be and the same is hereby amended as follows:

1. Paragraph 20 is hereby amended to read:

"20. Pursuant to Punsky v. Clay County Sheriff's Office, 33 FLW D1820 (Fla. 1st DCA opinion filed July 21, 2008), I find that the Employer/Carrier did not meet their burden in rebutting the presumption because they did not provide evidence of a specific non-occupational cause of the Claimant's hypertension. The evidence of the Employer/Carrier only establishes risk factors, not a cause."

2. Paragraph 23 is hereby amended to read:

"23. Based on the testimony of Dr. Fernandez, I find that the Claimant has not yet attained maximum medical improvement and that he should follow up with a cardiologist as well as his primary care physician. The Employer/Carrier is hereby ordered to authorize a cardiologist for evaluation and treatment for so long as reasonable, medically necessary, and causally related to the accident."

3. The Final Compensation Order dated August 22, 2008 is amended as indicated herein. In all other aspects the Final Compensation order remains in full force and effect.

4. The Employer/Carrier argued on rehearing, that the undersigned should appoint an Expert Medical Advisor. I find that the request is untimely. The conflict in the medical opinions in this claim have been apparent since no later than November 2007, when both parties had independent medical examinations conducted.

DONE AND MAILED this 18th day of September, 2008, in St. Petersburg, Pinellas County, Florida.

Donna S. Remsnyder
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
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FINAL COMPENSATION ORDER

THIS CAUSE was heard before the undersigned at St. Petersburg, Pinellas County, Florida on August 5, 2008, upon the Claimant's claims for compensability of the Claimant's occupational disease pursuant to F.S. 112.18; authorization, provision and payment of a cardiologist for evaluation and treatment of the cardiac condition; costs and attorney's fees. The Petition for Benefits was filed on December 22, 2007. Mediation occurred on April 3, 2008 and the parties' pretrial compliance questionnaire was filed on April 15, 2008. Tonya Anne Oliver, Esq. was present on behalf of the Claimant. Warren K. Sponsler, Esq. was present on behalf of the Employer/Carrier.

The defenses were that no accident in the course and scope of employment; no

occupational disease sustained, presumption not applicable; alternatively, competent evidence will show employment is not the cause of need for treatment; treatment with a cardiologist is not reasonable or necessary; statute of limitations barred recovery; Employer/Carrier seeks costs if prevails on any issue; that no costs nor attorney's fees were due or owing.

The following documentary items were received into evidence:

1. The pretrial stipulation sheet and Order dated April 15, 2008, together with the documentary items required by Rule 9.180 (Court's Exhibit #1).

2. Deposition of Joel Fernandez, M.D., taken July 9, 2008 (Claimant's Exhibit #1).

3. Deposition of Brien Pierpoint, M.D., taken July 7, 2008 (Employer/Carrier's Exhibit #1).

4. Deposition of Dena McKenzie, taken November 14, 2007 (Joint Exhibit #1).

5. Deposition of Claimant taken November 6, 2007 (Joint Exhibit #2).

6. Deposition of Claimant taken June 26, 2008 (Joint Exhibit #3).

7. Deposition of Dr. John Pierello taken November 14, 2007 (Joint Exhibit #4).

8. Morton Plant Hospital Records (Joint Exhibit #5).

At the hearing, the Claimant, John Connolly appeared and testified before me. In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the witness' testimony and may not refer to each piece of documentary evidence, I have observed the candor and demeanor of the witness, and I have attempted to resolve all of the conflicts in the testimony and evidence. Based on the foregoing and the applicable law, I make the following findings:

1. Those items to which the parties were in agreement on the pretrial stipulation sheet are

accepted and adopted as findings of fact.

2. The parties stipulated to an Employer-Employee relationship on the date of the alleged accident.

3. The Employer/Carrier has not accepted the accident nor the injuries as compensable and assert no timely notice.

4. The parties stipulated that average weekly wage was not an issue for determination at the hearing.

5. It was the Claimant's position that he had not yet attained maximum medical improvement or that he had reached it as found by Dr. Fernandez. It was the Employer/Carrier's position that MMI was reached on June 9, 2004 with a 0% permanent impairment rating as found by Dr. Pierpoint.

6. The parties stipulated that Sheriff White, nor any agents for Sheriff White advised the Claimant of his rights and benefits pursuant to Florida Statute Section 112.18, also known as the "Heart and Lung Bill" at the time of his claim from disability on June 1, 2004. In addition, neither Sheriff White, nor any of his agents advised the Claimant of rights and benefits pursuant to Florida Statute Section 112.18 upon his release and return to work on June 9, 2004, or thereafter.

7. The Claimant is employed by the Pasco County Sheriff's Office in the Fugitive Warrants Division. He originally was employed with the Sheriff's Office in 1989. A pre-employment physical was done June 7, 1989. The physical did not disclose hypertension or heart disease at that time. The Claimant was hired by the Sheriff's Office as a Deputy, but left for about six months to return to Pennsylvania. While in Pennsylvania, the Claimant did not work in

law enforcement. The Claimant returned to the Sheriff's Office and was rehired in May of 1990. The Claimant was not required to take another pre-employment physical upon his rehire.

8. The Claimant has been involved in several on the job accidents while working for the Sheriff's office, which have required treatment for physical injuries, none of which are really relevant to this claim. This claim is for compensability of the Claimant's hypertension.

9. The Claimant currently treats with Dr. John Pirrello, a Board Certified Family physician, and has been treating with him since sometime in 1994. Dr. Pirrello first became concerned about the Claimant having high blood pressure and hypertension in December 1994. The Claimant tried to regulate his blood pressure with diet and exercise. In July 2003, Dr. Pirrello first diagnosed the Claimant with mild hypertension when his blood pressure was 130 over 90. In October 2003, Dr. Pirrello followed up with the Claimant for his blood pressure and he diagnosed him with mild hypertension, but he did not prescribe any medication for the Claimant at that time.

10. On June 1, 2004, the Claimant awoke with chest pains. He testified that they subsided and he went in to work around 8:00 a.m. Shortly after arriving at work, the Claimant testified that the chest pains came back or increased and he also felt numbness in his arm. The Claimant testified that he was concerned that he was having a heart attack and he informed his supervisor that he was going to the hospital. The Claimant drove himself to North Bay Hospital. Later that day, another supervisor, Lieutenant Davis, came by the hospital to see the Claimant, but he did not personally see her.

11. The Claimant was admitted to the hospital for cardiac testing and underwent a cardiac catheterization the following day. The medical records from the Hospital show that the

Claimant had a normal heart catheterization and he was not specifically diagnosed with heart disease at that time. The Claimant was released from the hospital on June 2, 2004. On June 8, 2004, the Claimant was evaluated by Dr. Pirrello who released him back to full duty work as of June 9, 2004. The Claimant followed up with Dr. Saniour, the physician who had performed the catheterization, on June 16, 2004. The Claimant's blood pressure reading on that date was normal and Dr. Saniour did not think that the Claimant needed to treat with a cardiologist so he was discharged to the care of his primary physician.

12. Dr. Pirrello diagnosed the Claimant with hypertension on June 8, 2004, when his blood pressure was 120 over 90 and prescribed medication. The Claimant informed Dr. Pirrello at that visit of the stress that he was exposed to on the job.

13. The Claimant had an independent medical examination performed by Joel Fernandez, M.D., on November 9, 2007. Dr. Fernandez performed an EKG and Echocardiogram during the evaluation. Dr. Fernandez noted the Claimant's history of chest pain and elevated blood pressure requiring an evaluation in an emergency room. Dr. Fernandez indicated that the Claimant had an elevated blood pressure reading on June 1, 2004, at the time of admission, of 182 over 115. Dr. Fernandez testified that his review of the Claimant's records from his hospital admission showed that the Claimant had mild left ventricular hypertrophy and hypertension in 2004. Dr Fernandez noted that even though the results of the Echocardiogram concluded that the results were normal, when he reviewed the actual measurements contained therein, it was his opinion that the Claimant had thickening of the septal wall. Dr. Fernandez testified that the Claimant's hypertrophy is a form of heart disease and that it was evidenced by the thickness in the septal wall shown both in the 2004 Echocardiogram and in the Echocardiogram he performed in his

office in 2007. Dr. Fernandez testified that, within a reasonable degree of medical certainty, the Claimant had heart disease and hypertension and that that was the likely cause of his chest pains resulting in the hospitalization on June 1, 2004. Dr. Fernandez further testified that based on the symptoms presented in June 2004, along with the high blood pressure, he would have recommended that the Claimant remain off work. Dr. Fernandez testified that the in the future the Claimant would need to continue with his medications and follow up with a primary care physician and a cardiologist and maintain an ideal weight and avoid salt..

14. The Employer/Carrier had an independent medical evaluation conducted by Brien Pierpoint, M.D., on November 12, 2007. Dr. Pierpoint indicated that based on his review of the records that the Claimant did not have heart disease on June 1, 2004. Dr. Pierpont indicated that he did not address the issues of micro vascular angina and selective cardial ischemia (as discussed by Dr. Fernandez) because the Claimant's blood pressure was normal at the time of his examination. On cross-examination, Dr. Pierpoint testified that he was of the opinion that the Claimant did not have an elevated blood pressure reading upon admission to the hospital in 2004. Dr. Pierpoint admitted that he was not aware of whether or not the Claimant was given Nitroglycerin upon admission and indicated that the medication could have altered (lowered) the Claimant's blood pressure reading. Dr. Pierpoint testified that he did not think that the Claimant would have a permanent impairment rating. Dr. Pierpoint discussed the Claimant's risk factors in his report and his deposition. Although he conceded that there was a difference between causation and risk factors for hypertension, it seems as if Dr. Pierpoint uses the two terms interchangeably. Dr. Pierpoint indicated that the Claimant does have several risk factors, including family history, obesity and job stress. As stated in Punsky v. Clay County Sheriff's

Office, 1 D07-3901, the District Court has noted that risk factors do not amount to causation.

15. In reviewing the medical evidence before me I find that more weight should be given to Dr. Fernandez's testimony than to Dr. Pierpoint. It is clear that even though Dr. Pierpoint testified that he reviewed substantially all of the medical reports on the Claimant, it is clear that he was unaware of numerous important facts contained in those records. That Dr. Pierpoint did not know that the Claimant had an elevated blood pressure reading and that he was administered Nitroglycerin upon admission to the emergency room greatly reduces the weight that should be given to his opinions as to the causation of the hospitalization. As such, I accept the opinions of Dr. Fernandez over the opinions of Dr. Pierpoint in any areas where they disagree.

16. Florida Statutes Section 112.18 states: "Any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter....caused by tuberculosis, heart disease or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence."

17. Pursuant to Florida Statutes Section 112.18, the Claimant must prove four points in order to be entitled to the presumption;

A. That he is a member of the protected class (i.e. law enforcement officer, firefighter, or correctional officer);

B. That he developed a covered condition (i.e. hypertension, heart disease, or tuberculosis);

C. That he underwent a pre-employment physical that failed to reveal evidence of the claimed condition;

D. That the covered condition resulted in temporary, partial, or permanent disability or death (temporary or permanent incapacitation from performing his duties as a law enforcement officer).

18. I find that the Claimant satisfied each element to establish that he is entitled to the presumption. First, there is no argument that the Claimant is not a member of the protected class. The Claimant is employed as a detective assigned to fugitive warrants and that job presents the specific special hazards and stresses that the Legislature recognized when enacting the statutory presumption. Second, the Claimant developed hypertension, as testified to by Dr. Fernandez, and Dr. Pirrello. Additionally, according to Dr. Fernandez, the Claimant also suffers from heart disease. Third, the Claimant had a pre-employment physical that failed to reveal any evidence of the claimed condition. I find that the Claimant underwent a physical upon first becoming employed by this Employer. He was rehired less than a year later and was not required to take another physical. As such, I find that the physical from June 7, 1989, is close enough in time to his second employment date to satisfy this requirement. Fourth, the hospitalization and catheterization during June 2004, qualify as a temporary or partial disability as the Claimant was unable to perform his duties as a law enforcement officer during that time.

19. The Employer/Carrier asserts that the hospitalization was not due to the hypertension so that the Claimant does not satisfy the final requirement of disability since he has been released to full duty and has been able to remain actively employed with the Sheriff's office. It is clear that the Claimant was having chest pains and arm numbness when he went to the Emergency room. The records establish that the physicians were concerned that the Claimant was having a heart attack and gave him Nitroglycerin upon admission. The Claimant was

admitted for a cardiac work up and fortunately he did not have blockage upon catheterization, but that does not establish that the hospitalization was due to anything other than his hypertensive condition. Dr. Fernandez testified as to the Claimant's hypertension and heart disease as a result of the testing performed both at the time of admission and at the time of his evaluation. Dr. Fernandez also testified that he would have kept the Claimant off work during that period and that he would have worked him up for a cardiac condition, just as the hospital did at the time. Based on the evidence before me, I find that during the hospitalization, the Claimant was disabled and unable to perform his duties as a law enforcement officer.

20. Pursuant to Caldwell v. Division of Retirement, Florida Division of Administration, 372 So.2d 438 (Fla. 1979), where there is conflicting medical evidence supporting the presumption, the burden is more stringent and the presumption may only be overcome by clear and convincing evidence. I find that the Employer/Carrier has failed to establish clear and convincing evidence to overcome the presumption in the case at bar.

21. The Employer/Carrier asserts that the Claimant failed to give timely notice of the injury and that the Statute of Limitations has expired. Based on the stipulation of the parties, it is clear that although the Claimant may have been familiar with Workers' Compensation Claims and the procedures for filing same that no one informed him that the law may apply to his condition. The Claimant told his supervisor that he was going to the hospital due to chest pains. One of his other supervisors also visited him in the hospital. As such, I find that the Employer was on actual notice that the Claimant was suffering from chest pains and was admitted to the hospital. The Claimant's uncontroverted testimony also establishes that he filled out time sheets for his absence after being released by the physicians and returning to work. As such, I find that

the Claimant timely notified his Employer of his medical condition both prior to going to the hospital and upon his return to work and he has satisfied Florida Statutes Sections 440.185(1) and/or 440.151(6) (2004).

22. The Claimant testified that no one told him that his condition may be covered under Workers' Compensation until a co-worker informed him of it approximately two months prior to his attorney filing the Petition for Benefits. The Employer was on notice of the Claimant's hypertensive condition and failed to inform him of the necessity for timely filing a claim and failed to file a Notice of Injury as required by Florida Statutes Section 440.185(2). Additionally, the Employer/Carrier failed to provide the Claimant with the informational brochure required by Florida Statutes Section 440.185(4). As such, I find that the Claimant's failure to file a claim within two years of his diagnosis was reasonable under the circumstances. Based on the Employer/Carrier's actions as delineated herein, I find that they are estopped to assert the Statute of Limitations defense.

23. Based on the testimony of Dr. Fernandez, I find that the Claimant should follow up with a cardiologist as well as his primary care physician. The Employer/Carrier is hereby ordered to authorize a cardiologist for evaluation and treatment for so long as reasonable, medically necessary, and causally related to the accident.

24. Since the Claimant has prevailed, he is entitled to reimbursement of the taxable costs of these proceedings. Jurisdiction is reserved on the amounts if the parties are unable to agree.

25. Since the Claimant has prevailed, his attorney is entitled to be paid a fee at the Employer/Carrier's expense. Jurisdiction is reserved on the amount if the parties are unable to agree.

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that:

1. The Claimant's heart disease and hypertensive conditions are compensable and the Employer/Carrier is responsible to provide the Claimant with ongoing treatment for same for so long as reasonable and medically necessary.

2. The Employer/Carrier shall authorize a cardiologist for evaluation and treatment of the conditions for so long as reasonable, medically necessary, and causally related to the accident.

3. The Employer/Carrier shall reimburse the taxable costs of these proceedings. Jurisdiction is reserved on the amounts if the parties are unable to agree.

4. The Employer/Carrier shall pay to the Claimant's attorney a reasonable fee for securing the benefits herein. Jurisdiction is reserved on the amount if the parties are unable to agree.

DONE AND MAILED this 22nd day of august, 2008, in St. Petersburg, Pinellas County, Florida.

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