IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

WILLIAM FULLER,

Appellant,

v.

CASE NO. 1D09-1166

OKALOOSA CORRECTIONAL INSTITUTION and DIVISION OF RISK MANAGEMENT,

Appellees.

_____/

Opinion filed November 24, 2009.

An appeal from an order of the Judge of Compensation Claims.
Nolan S. Winn, Judge.

Date of Accident: December 5, 2007.

Steven P. Pyle, Winter Park, and Bill McCabe, Longwood, for Appellant.

Frank C. Bozeman, III and Colleen Cleary Ortiz of Bozeman, Jenkins & Matthews, P.A., Pensacola, for Appellees.

PER CURIAM

Claimant, a corrections officer, challenges an order of the Judge of Compensation Claims (JCC) denying compensation for a cardiac condition. Claimant argues competent substantial evidence (CSE) does not support the JCC's finding that the Employer rebutted the presumption of compensability provided for

in section 112.18, Florida Statutes (2007), by showing a non-occupational cause of the condition. We agree and reverse.

Background

In 1995, prior to entering into service as a corrections officer with the Employer, Claimant suffered a fainting episode which required medical attention. Claimant was hospitalized and underwent a battery of tests, all of which were negative for any cardiac condition or heart disease. In 1997, Claimant became employed with the Employer as a corrections officer after successfully passing a physical examination which failed to reveal any evidence of a cardiac condition.

In 2003, while Claimant was employed with the Employer, Claimant had another fainting episode that was attributed to either sick sinus syndrome or vasovagal syncope, conditions which cause a decreased heart rate which, in turn, causes an individual to become dizzy and pass out. As a result, a pacemaker was implanted to prevent the recurrence of such syncopal events.

Claimant filed a claim for compensation for this condition, and the JCC found that whether Claimant was suffering from sick sinus syndrome or vasovagal syncope, both were cardiac conditions and thus, Claimant was entitled to the presumption afforded by section 112.18(1), Florida Statutes. Nevertheless, the JCC found the E/C rebutted the presumption because logic dictated that the same condition that caused the decreased heart rate that resulted in the 1995 syncopal

episode (which predated Claimant's employment) was also responsible for the 2003 event. Significantly, this finding was supported by the opinion testimony of the Employer's independent medical examiner (IME), Dr. Videau, who testifed that the most likely diagnosis was vasovagal syncope, which was pre-existing and, thus, not job-related. On appeal, this court affirmed the JCC's finding and the resulting denial of compensation. Fuller v. Okaloosa Corr. Inst., 13 So. 3d 470 (Fla. 1st DCA 2009) (PCA).

In 2007, Claimant had another fainting episode. At the time of this event, however, a rapid heart rate was recorded by Claimant's pacemaker. Because the pacemaker was implanted to prevent a decreased heart rate and episodes relating therefrom and further, because an elevated heart rate was recorded, Dr. Mathias, Claimant's cardiology IME, ruled out vasovagal syncope as the cause of the 2007 event – the cause ascribed by the Employer's IME, Dr. Videau. Dr. Mathias further opined that the most likely diagnosis of the condition causing the 2007 event was right ventricle outflow tract (RVOT) tachycardia, which is a rapid heartbeat from the right ventricle. Dr. Mathias could not state whether Claimant had this same condition prior to his employment. Contrarily, Dr. Videau, testifed he did not believe Claimant had RVOT tachycardia.

Claimant filed a claim for compensability of the RVOT tachycardia. The JCC found RVOT tachycardia was the only suggested diagnosis which would

explain why Claimant suffered the 2007 syncope. The JCC found Claimant established entitlement to the presumption of compensability afforded by section 112.18(1). Nevertheless, the JCC again found the E/C rebutted the presumption because he found it reasonable and logical to conclude RVOT tachycardia caused not only the 2007 episode, but the 1995 and 2003 episodes as well. In explaining the means by which the E/C overcame the presumption of compensability, the JCC stated:

> Unlike 2007 when the pacemaker was in place to act as a heart monitor, claimant was not subject to any form of heart monitoring in 1995 or 2003. As a result, there is no evidence Claimant's syncope episodes in 1995 and 2003 were caused by a decrease in heart rate as opposed to an increase in heart rate. If, as Claimant contends and as Dr. Mathias opines, his proper diagnosis is RVOT tachycardia, I find it both reasonable and logical to conclude RVOT tachycardia caused not only the 2007 episode, but the 1995 and 2003 episodes as well.

On appeal, Claimant argues CSE does not support the JCC's finding the Employer rebutted the presumption of compensability afforded by section 112.18(1), because no medical evidence established Claimant had a cardiac condition or disease, most notably RVOT tachycardia, prior to entering service as a corrections officer.

Analysis

We begin by noting that the unique procedural posture of this case constrains our analysis. Here, the JCC found Claimant, a corrections officer, had disabling RVOT tachycardia, a cardiac condition, which was undetected on

Claimant's pre-employment physical. Accordingly, the JCC concluded Claimant was entitled to the presumption of compensability found in section 112.18(1). These findings and conclusions are not challenged on appeal and thus, the foundation of our opinion is predicated on a presumed, but rebuttable, finding that Claimant's 2007 episode was caused by RVOT tachycardia which was accidental and suffered in the line of duty pursuant to section 112.18(1). Because Claimant successfully passed the pre-employment physical, a necessary condition for the application of the presumption, the 1995 fainting episode becomes relevant only to the extent, if any, that it supports the Employer's burden in rebutting the presumption of occupational causation relative to the RVOT tachycardia.

The presumption afforded by section 112.18(1)(2007) relieves a qualifying claimant from the necessity of proving occupational causation of the heart disease resulting in disability or death. See Talpesh v. Village of Royal Palm Beach, 994 So.2d 353(Fla.1st DCA 2008). In Punsky v. Clay County Sheriff's Office, 34 Fla. L. Weekly D516 (Fla. 1st DCA March 6, 2009), this court stated as follows:

> In summary, there is a clear path for the application of the section 112.18(1) presumption. The presumption does not vanish upon presentation of contrary evidence. Instead, it remains with the claimant who establishes his or her entitlement to the presumption and the presumption is itself sufficient to support an ultimate finding of industrial causation unless overcome by evidence of sufficient weight to satisfy the trier of fact that the tuberculosis, heart disease or hypertension had a non-industrial cause. It is the evidence of non-industrial causation that may be found to rebut the presumption, not the mere existence of risk factors or conditions.

Punsky, 34 Fla. L. Weekly at D518 (internal citations omitted). Because a claimant's burden of proving major contributing cause (MCC) by medical evidence, is fully met where the presumption contained in section 112.18(1) is applied, the Employer, in rebutting the presumption must likewise disprove occupational causation by medical evidence. See § 440.151(1), Fla. Stat. (2007) (requiring claimant to prove causation of occupational disease by presenting medical evidence establishing major contributing cause of disease is nature of employment); § 112.18(1), Fla. Stat. (2007) (stating any condition caused by heart disease shall be presumed to have been accidental and to have been suffered in the line of duty).

At oral argument, the Employer asserted that the strongest evidence of a non-occupational cause of Claimant's RVOT tachycardia comes from the testimony of Dr. Mathias, Claimant's IME. Dr. Mathias offered no opinion, stated within a reasonable degree of medical certainty, establishing Claimant had RVOT tachycardia prior to his entry into service as a corrections officer. Moreover, Dr. Mathias testified he could not say whether RVOT tachycardia was responsible for the 1995 fainting episode.

Dr. Videau, whose medical diagnosis of vasovagal syncope was rejected by the JCC, testified within a reasonable degree of medical certainty that Claimant did not have RVOT tachycardia – ever. Because the JCC found RVOT tachycardia is

the cardiac condition to which the section 112.18(1) presumption applies, it was incumbent on the E/C to demonstrate by medical testimony established within a reasonable degree of medical certainty, that the RVOT tachycardia was caused by some non-work-related factor. See Lentini v. City of W. Palm Beach, 980 So. 2d 1232, 1233 (Fla. 1st DCA 2008) (stating where claimant can offer no evidence of occupational causation and relies exclusively on statutory presumption, E/C must produce CSE that establishes disease was caused by some non-work-related factor). Because no medical evidence established a non-occupational cause of Claimant's RVOT tachycardia within a reasonable degree of medical certainty, we are constrained to reverse because CSE does not support the JCC's finding that the E/C rebutted the statutory presumption of compensability afforded by section 112.18(1), Florida Statutes (2007).

REVERSED and REMANDED for further entry of an order consistent with this opinion.

BENTON and THOMAS, JJ., and HANKINSON, JAMES C., ASSOCIATE JUDGE, CONCUR.

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

William C. Fuller, Employee/Claimant,	)	
vs.	)	OJCC Case No. 07-010049NSW
Okaloosa Correctional Institution/Florida Department of Financial Services, Employer/ Carrier/Servicing Agent.	)	Accident date: 5/28/2003

FINAL COMPENSATION ORDER

THIS CAUSE came on to be heard in Shalimar, Okaloosa County, Florida on 07-09-08 upon Claimant's claim for compensability of heart disease pursuant to the heart/lung statute, authorization of a treating physician and cardiologist, penalties, interest, costs and attorney's fees. The Petition for Benefits was filed 04-11-07. Mediation was conducted on 06-25-07, seventy-five (75) days after the petition was filed. The parties' pretrial compliance questionnaire was filed 07-11-07. The final hearing occurred four hundred fifty-four (454) days after the petition was filed and this Order was entered eight (8) days thereafter. Steven Pyle, Esq. was present in Shalimar on behalf of the Claimant. Frank Bozeman, Esq. was present in Shalimar on behalf of the Employer/Carrier (hereafter "E/C").

Submitted into evidence at the Final Hearing were the following documents, each accepted, identified and placed into evidence without objection except where noted, as Judge's Exhibits, Joint Exhibits, Claimant's Exhibits, or E/C Exhibits, as follows:

JUDGE'S EXHIBITS MARKED FOR THE RECORD:

#1. The parties' pre-trial questionnaire filed 07-11-07.
#2. E/C's Supplement Stipulation and Final Witness List filed 12-07-07.
#3. E/C's Supplement Stipulation and Final Witness List filed 12-01-07.
#4. Petition for Benefits filed 04-11-07.
#5. E/C Response to Petition for Benefits filed 04-24-07.

JOINT EXHIBITS:

None.

CLAIMANT'S EXHIBITS:

#1. Claimant's Pre-Employment Physical dated 12-20-96.

#2. Claimant's Payroll Records from 02-14-03 to 06-05-08.

#3. Explanation of Benefit forms regarding medical care and treatment.

#4. Deposition of Dr. Patrick Mathias taken 06-30-08.

E/C's EXHIBITS:

#1. First Report of Injury dated 03-16-07.

#2. Dept. of Correction Incident Report dated 03-16-07.

#3. Notice of Denial dated 03-27-07.

#4. Deposition of Dr. Brent Vidcau taken 09-19-07.

#5. Claimant's Personnel File

OBJECTIONS

a. The E/C objected to the medical records attached to Claimant's Ex. #4, the Deposition of Dr. Mathias as the same were medical records of unauthorized providers who were not IME's or EMA's. Claimant stated such records were being offered solely for factual purposes and not expressions of opinions which may be contained therein. E/C's objection is overruled and said medical records are admitted for factual purposes only.

In making the determinations set forth below, I have attempted to distill the salient facts together with the findings and conclusions necessary to resolve this claim. I have not attempted to painstakingly summarize the substance of the parties' arguments, nor the support given to my conclusions by the various documents submitted and accepted into evidence; nor have I attempted to state nonessential facts. Because I have not done so does not mean that I have failed to consider all of the evidence. In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all evidence submitted to me. I have considered arguments of counsel for the respective parties, and analyzed statutory and decisional law of Florida.

Based upon the parties' stipulations and the evidence and testimony presented, I find:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.

2. The parties' stipulations and agreements, set forth in the pretrial compliance questionnaire are accepted, adopted and made an order of the Office of the Judge of Compensation Claims.

3. Any and all issues raised by way of the Petitions for Benefits ("PFB"), but which issues were not dismissed or tried at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the Claimant and, therefore, are Denied and Dismissed with prejudice. See, Scotty's Hardware v. Northcutt, 883 So.2d 859 (Fla. 1st DCA 2004).

4. Claimant is forty-nine years of age and began working as a correctional officer for the employer on 01-10-97 after completing a pre-employment physical which revealed no heart disease. His duties as a correction's officer included and continue to include the care, custody and control of prison inmates.

5. Claimant testified on 05-28-03 while mowing his yard at home on his day off, he passed out. He testified having no specific recollection of the incident though he was taken to North Okaloosa Hospital for testing and implantation of a pacemaker. Following this procedure, Claimant testified he was off work for eight (8) weeks until he could obtain a full duty work release from Dr. Shalit as required by the employer. The bills for his medical care and treatment were submitted to and paid in part by his private health insurer. When he did return to work, he discussed the 05-28-03 incident and the implanting of the pacemaker with his supervisor, the officer in charge (OIC). He testified such discussion did not involve whether the incident or subsequent treatment may or may not have been work related. Claimant stated he did not become aware such incident may have been a workers' compensation matter until he attended a PBA seminar in Crestview, Florida in February 2007. Claimant denied the employer ever advised him of any rights and/or obligations concerning the 05-28-03 incident, and testified nothing was posted at his work location advising him of any such rights and/or obligations. Claimant acknowledged completing an Incident Report Form and signing a First Report of Injury on 03-16-07.

6. Claimant testified he experienced a similar incident in 1995, again while mowing the lawn, passing out, biting his tongue and being seen at the hospital by Dr. Katzenstine. He also testified to a third syncope event in December 2007 at a Wal-Mart store in Alabama, being taken by ambulance to a hospital and taking cardiac medications since January 2008.

7. Anita Fuller is Claimant's wife of twenty-one (21) years. She testified while her husband was still in the emergency room on 05-28-03 waiting to be admitted, she called his employer, asked to speak to the captain on duty and advised him that "something had happened in the yard and he was being admitted." She called the employer later and advised the captain on duty her husband needed a pacemaker. (The pacemaker was implanted by Dr. Pedone on 05-30-03). Ms. Fuller testified she called the employer a third time following Claimant's first follow-up doctor visit after his release from the hospital (06-19-03 per Dr. Shalit's records). Such call was to advise the employer Claimant could not return to work for eight (8) weeks unless it was lite duty. She testified to being advised there was no lite duty work available.

8. Dr. Terry Payne appears to have been Claimant's personal physician since the mid-1990's. While his

records deal mainly with treatment of sore throats and nasal congestion, the same include a report on 08-28-95 of a recent seizure and concussion followed by an 07-29-96 report of complaints of dizziness for three (3) days which hit Claimant all at once walking, sitting or standing; that Claimant had this in the past, passed out, bite his tongue and was seen at Crestview Hospital where an EMG conducted 08-28-95 suggested central nervous system pathology.

9. Regarding to the 05-28-03 incident, Dr. Mark Katzenstine's history and physical indicate on the morning of 05-28-03, Claimant ate breakfast; went on a one and one-half mile walk with a friend; worked on the roof of his house cutting limbs with a pole saw; gathered and stacked the cut limbs; ate lunch; cut grass for 25 minutes when a neighbor advised Claimant's wife of a problem; Claimant appeared at the front door of his home bleeding from the mouth and staggering; his sunglasses were found next to the lawn mower; his wife reported he often gets dazed and confused after eating sweets such as the pancakes and syrup he ate that morning; and that he had a similar incident in 1994.

10. Dr. Patrick Mathias is board certified in internal medicine, cardiology critical care, interventional cardiology and electrophysiology. He was Claimant's IME and saw Claimant 08-08-07 and reviewed prior medical records. He testified to obtaining a history from Claimant of a 2003 incident while mowing the yard and going to the hospital. Claimant had bitten his tongue, was unable to speak when he awoke and later had a pacemaker implanted. While Claimant did not reveal the same, records reviewed indicated a similar syncope incident in 1995. On examination, Dr. Mathias found Claimant overweight but otherwise his physical examination was normal including blood pressure and EKG. Dr. Mathias agreed with the diagnosis of other treating physicians that Claimant had sick sinus syndrome with implantation of a pacemaker.

11. Dr. Mathias testified the sinus node is a group of cells in the right atrium which fire electrical current 70 times per minute, more under stressful conditions and less under relaxed conditions. This electrical current is transmitted throughout the heart causing the heart to beat. In some individuals, usually ones older than Claimant, fibrosis or scarring, develops in the cells of the sinus node interrupting the electrical transmission. This interruption results in the heart stopping for a period of time causing the individual to become dizzy and perhaps even pass out. Such condition is known as sick sinus syndrome. Implanting a pacemaker to fire when it senses the interruption of electrical activity is the proper treatment.

12. Dr. Mathias testified that neurocardiogenic syncope, or vasovagal syncope, is a condition where there is an abnormal message transmitted between the brain and the heart causing the heart to beat too slowly. This will result in the individual becoming dizzy and perhaps pass out. Dr. Mathias testified that unlike sick sinus syndrome where the problem is the sinus node, with neurocardiogenic syncope, the problem is between the brain and the heart. According to Dr. Mathias, both conditions result in the heart beating too slowly, the individual becoming dizzy and passing out; both conditions are treated by cardiologist; acceptable treatment is implanting a pacemaker; and both conditions are properly characterized as heart disease.

13. Following Claimant's initial evaluation and preparation of his report, Dr. Mathias was advised Claimant had suffered another syncope episode in December 2007. Medical records following this event were provided to Dr. Mathias including evidence from the pacemaker of a heart rate as high as 187 beats per minute. Electrophysiological studies by Dr. Naidoo revealed Claimant's heart is incapable of conducting from the upper chambers to the lower chambers at a high rate but can conduct at a high rate from the lower chambers to the upper chambers. According to Dr. Mathias, these findings indicate Claimant may have right ventricle tachycardia or RVOT, a condition whereby muscle cells in the right ventricle become autonomous, beat rapidly and eventually take control of the heartbeat completely. At a high rate, the heart is inefficient and insufficient blood is supplied to the brain resulting in syncope. After considering this additional information, Dr. Mathias testified while Claimant may possibly have sick sinus syndrome, he probably has RVOT. Dr, Mathias is not certain if this was the case however in 2003. Whatever Claimant's diagnosis was in 2003, Dr. Mathias opined that Claimant would have been disabled from working after any syncope event. Additionally, he testified Claimant was MMI as of his 08-08-07 evaluation with an18% impairment as a result of the 05-28-03 incident. Following the 2007 incident, Claimant's impairment rating would have increased to 34%. It is also Dr. Mathias' opinion Claimant cannot work as a corrections officer as he would be in danger should he have a syncope episode while guarding prisoners. This is true despite his opinion that RVOT is not a life threatening condition as his concern is Claimant passing out, falling and injuring himself, or being left to the mercy of inmates.

14. Claimant did not advise Dr. Mathias of his history of coughing, dizziness and passing out nor does Dr. Mathis recall any conversation of such incidents. Dr. Mathias did testify that "cough syncope" has many causes including slowing of the heart rate when coughing (vasovagal syncope) and intra-thoracic pressure rising cutting off the blood flow to the brain resulting in dizziness and passing out. When addressing Dr. Payne's report in 1996 of complaints of dizziness and passing out, Dr. Mathias stated Claimant's history of respiratory infections treated with antibiotics may have also caused his dizziness.

15. Dr. Mathias did testify that the eight (8) year period between the 1995 and 2003 syncope episodes is unusual and would make a diagnosis of vasovagal syncope more likely. He also agreed that the circumstances surrounding the 1995 and 2003 incidents including working in the yard, in the heat, with a history of dizziness when coughing would render it more likely the proper diagnosis would be neurocardiogenic syncope rather than sick sinus syndrome. This would not be true with regards to the 2007 syncope incident which was caused by rapid increase in heart rate rather than a slowed heart rate.

16. Dr. Mathias also testified he could not state whether any of Claimant's job activities, stressors or exposures contributed in any way to his syncope episodes or the progression of his condition.

17. Dr. Brent Videau is board certified in internal medicine and cardiology. He was the E/C's IME and examined Claimant 08-14-07 receiving a history of two (2) syncope episodes, the first in 1995 and the second in 2003. The 1995 incident occurred while Claimant was outdoors performing yard work, passed out suffering abrasions to his

head and lacerations to his tongue where he had bitten it. He was evaluated by a neurologist and cardiologist and was believed to have suffered neurocardiogenic syncope. The 2003 incident also occurred while Claimant was outdoors performing yard work. He again passed out and thereafter was confused and dazed, his gait was unsteady and his speech somewhat incoherent. He was evaluated by a neurologist and cardiologist and a pacemaker was implanted. Claimant advised Dr. Videau he occasionally feels as if he is going to pass out when he coughs and did pass out on two (2) occasions during coughing spells. According to Dr. Videau, syncope episodes while coughing are known as tussive or situational syncope and may result in dizziness and passing out caused by the individual bearing down or straining while coughing, laughing or urinating.

18. Dr. Videau reviewed echocardiograms and nuclear stress testing performed after the 2003 incident which indicate Claimant may have sick sinus syndrome. He also reviewed a normal stress test from 2004 conducted after Claimant was seen complaining of chest pain. At the time of Dr. Videau's IME evaluation, the pacemaker implanted in 2003 had prevented any further syncope events. (Dr. Videau's evaluation, report and deposition were conducted prior to the December 2007 syncope episode at the Wal-Mart Store in Alabama.)

19. According to Dr. Videau, physical examination revealed Claimant to be overweight, perhaps obese by current standards. His heart sounds were normal without murmur or gallop, his lungs were clear, he had good pulses, an electrocardiogram interpreted by Dr. Shalit was normal as was the 2004 perfusion study measuring the percentage of blood the heart was able to eject with each contraction. It was Dr. Videau's opinion based upon his examination and the records reviewed that Claimant's heart is normal without valve disease or wall motion abnormality.

20. Dr. Videau described neurocardiogenic syncope, also known as vasovagal syncope, as a condition caused by overexertion of the nervous system brought about by environmental stimuli such as exposure to heat and dehydration, both of which appear to have been present in Claimant's 1995 and 2003 syncope episodes. He testified implanting of a pacemaker was a proper course of treatment.

21. Regarding sick sinus syndrome, Dr. Videau testified the same is a disease which causes an irregular and abnormally slow heart rhythm with proper treatment being implantation of a pacemaker. He agreed an eight (8) year hiatus between syncope episodes is very unusual and is of the opinion, based on such hiatus, his examination of Claimant and records reviewed including one EKG report revealing a slowed heart rhythm, that there is insufficient documentation to support a diagnosis of sick sinus syndrome. Rather, it is his opinion proper diagnosis of the 1995 and 2003 episodes is neurocardiogenic syncope and that proper treatment was implanting of the pacemaker.

22. Dr. Videau also testified he is unable to make any association between Claimant's syncope episodes or his diagnosis of neurocardiogenic syncope and Claimant's employment activities. He also is of the opinion Claimant was unable to work for a period following his syncope episodes and would have been disabled for at least three (3) weeks following the implanting of a pacemaker to allow the incision site to heal.

23. Ch. 112.18(1), F.S. provides that "[a]ny condition or impairment of health of any... correctional officer as defined in s. 943.10(1), (2), or (3)...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." The Supreme Court in Caldwell v. Division of Retirement, 372 So.2d 438, 441 (Fla. 1979) held this presumption relieves the employee of the necessity of proving causation of the disease and "cast on the employer the burden of persuading the trier of fact that the disease was caused by a non-occupational related agent."

24. To be entitled to the presumption, a claimant must prove each of the four (4) elements: (1) he/she is a member of the protected class; (2) he/she passed a pre-employment physical indicating the disease was not then present; (3) he/she has since such time been diagnosed with the disease; and (4) the disease has resulted in disability.

25. Ch. 943.10(2), F.S. defines a correctional officer as any person employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, and control of inmates within a correctional institution. The uncontroverted evidence establishes that Claimant falls within the protected class of employee entitled to benefit of the presumption.

26. Claimant did pass a pre-employment physical which did not reveal evidence of heart disease. Claimant has therefore satisfied this element of proof. Interestingly, a corrections officer whose alleged injury occurred prior to the 10-1-07 passage of Ch. 943.13(6), F.S., it is arguable Claimant was not required to offer proof of passing a pre-employment physical in order to be entitled to the benefit of the presumption. See, State v. Reese, 911 So.2d 1291 (Fla. 1st DCA 2005). See also however, Seminole County Sheriff's Office v. Johnson, 901 So.2d 342 (Fla. 1st DCA 2005) indicating presumption amendments are procedural and apply retroactively.

27. Dr. Mathias is of the opinion Claimant's diagnosis is sick sinus syndrome. Dr. Videau is of the opinion Claimant's proper diagnosis is neurocardiogenic syncope. Both doctors testified either condition causes an individual's heart rate to slow to the point the individual may become dizzy and pass out. Both also agree proper treatment is implantation of a pacemaker. Both also agree sick sinus syndrome is heart disease, but Dr. Videau contends neurocardiogenic syncope is a condition not heart disease. While the doctors may disagree as to the appropriate diagnosis, determining the correct diagnosis is not necessary in adjudicating this matter. What is necessary is a determination whether Claimant has been diagnosed with a heart disease, and therefore whether neurocardiogenic syncope is heart disease as such term is utilized in the heart/lung statute.

28. When the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction and the statute must be given its plain and obvious meaning. McLaughlin v. State, 721 So.2d 1170, 1172 (Fla. 1998).

Black's Law Dictionary, Eighth Edition, 2004, defines disease as:

> "1. a deviation from the healthy and normal functioning of the body;
> 2. special classes of pathological conditions with similar traits, such as having similar causes and affecting similar organs;
> 3. any disorder; any depraved condition...
>
> Functional disease is defined as "a disease that prevents, obstructs, or interferes with an organ's special function, without anatomical defect or abnormality in the organ itself."

Similarly, Stedman Medical Dictionary defines disease as:

> "an interruption, cessation, or disorder of body functions, systems, or organs."

29. Dr. Mathias and Dr. Videau agree sick sinus syndrome is a disease. They disagree whether neurocardiogenic syncope is a condition or a disease. Both testified neurocardiogenic syncope and sick sinus syndrome cause the heart to beat abnormally slow; that such abnormality will result in the affected individual feeling dizzy and perhaps passing out; and that proper treatment for both conditions is implantation of a pacemaker. Obviously both conditions cause a deviation in the normal healthy functioning of the heart; both conditions have similar traits and affect the same organ; and both conditions prevent, obstruct or interfere with the proper functioning of that organ. I find each condition is a "heart disease." No matter which IME diagnosis is correct, under either, Claimant has been diagnosed with "heart disease."

30. As adjudication is not dependent upon determining which of the two differing diagnoses is correct, the diagnostic dispute between Drs. Mathias and Videau in such regard does not require appointment of an EMA and such is unnecessary. Unlike Palm Beach County Sheriff's Office v. Bair, 965 So.2d 1210 (Fla. 1st DCA 2007), the instant situation does not require appointment of an EMA.

31. The last element of proof is whether Claimant was disabled. The evidence is undisputed that Claimant was disabled and unable to work for eight (8) weeks following the 05-28-03 incident. While there may be a dispute as to the length of time of such disability, I accept the testimony of Claimant and Ms. Fuller that the employer would not allow Claimant to return to work following implantation until he received a full duty release from the physician.

32. As Claimant has successfully proven each of the elements of the presumption, the burden of proof shifts to the E/C to offer evidence sufficient to rebut the presumption that the disease is work related. To rebut such presumption, the E/C must present evidence sufficient to persuade "the trier of fact that the disease was caused by a

non-occupationally related agent", Caldwell, 372 So.2d at 441; "evidence that convinces a JCC that the disease was caused by some non-work related factor", Saldana v. Miami-Dade County, 978 So.2d 823 (Fla. 1st DCA 2008); or "evidence that the disease was caused by a specific non-work-related event or exposure," Butler v. City of Jacksonville, 980 So.2d 1250 (Fla 1st DCA 2008). Whether the evidence necessary to rebut the presumption must be clear and convincing or merely competent and substantial, "simply submitting evidence creating a conflict... (does)... not rebut the presumption," Jones v. Dept. of Health and Rehabilitative Services, 552 So.2d 926, 928 (Fla. 1st DCA 1989). "The presumption would be meaningless if the only evidence necessary to overcome it is evidence that there has been no specific occupationally related event that caused the disease." Caldwell, 372 So.2d at 441.

33. In its effort to rebut the presumption the E/C was successful in having both Dr. Mathias and Dr. Videau testify they are unaware of any correlation or association between Claimant's heart disease and his employment. Dr. Videau testified he is unable to make any association between Claimant's syncope episodes or his diagnosis of neurocardiogenic syncope and Claimant's employment activities. Dr. Mathias testified he could not state that Claimant's job activities, stressors or exposures contributed in any way to his syncope episodes or the progression of his heart disease. While neither physician is able to testify to any such association or causal connection, the legislature, by enacting the statutory presumption that Claimant's heart disease is work related, has rendered the doctors testimony in this regard irrelevant and immaterial. While the E/C may have presented unrebutted testimony from the doctors that medically they cannot identify a casual connection, such evidence is insufficient to rebut the statutory presumption that Claimant's heart disease is work related.

34. I do find however, that the E/C has presented evidence sufficient to persuade the trier of fact that the disease was caused by a non-occupationally related agent; evidence that convinces this JCC that the disease was caused by some non-work related factor; and evidence that the disease was caused by a specific non-work-related event or exposure." In 1995, two (2) years prior to passing his physical and beginning his employment, Claimant suffered a syncope episode nearly identical in circumstance and character to the 2003 syncope episode which he contends is a compensable work related accident. I find no substantial or significant difference or distinction between the cause of either of these two nearly identical syncope events. The facts and evidence regarding the two syncope episodes is no different than the facts and evidence would be if this were a slip and fall case with two MRI's, one before the fall and one after. If the latter MRI (or syncope episode) were identical to the earlier MRI (or syncope episode) the only reasonable and logical conclusion would be the fall (or employment) was not the cause of the alleged injury. The fact Claimant obtained an erroneous and incorrect pre-employment physical does not alter nor preclude such a finding.

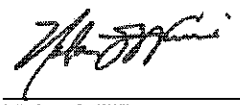
35. As Claimant had not started working for the employer when he suffered his first syncope episode in 1995, such event clearly was not related to a job he did not yet have; was undoubtedly the result of some non-work factor; and was brought about due to some non-work-related event or exposure. When Claimant suffered a second syncope event in 2003 under extraordinarily similar circumstances, it can not be presumed such event was related to his occupation unless all reason and logic are ignored.

36. I find the evidence presented clearly establishes that the same non-work factors, events or exposures which precipitated the 1995 syncope episode were also the cause of the 2003 syncope episode. The E/C has therefore presented clear and convincing evidence sufficient to rebut the presumption that Claimant's heart disease is work related. As Claimant proceeded solely under the statutory presumption to establish compensability and as there is insufficient evidence to establish that the 05-28-03 incident is the result of an occupational disease, it is,

ORDERED AND ADJUDGED that:

1. Claimant's claim for compensability of the accident of 05-28-03 is **DENIED.** As to such claim, the E/C shall go hence without day. Any and all Petitions for Benefits asserting the 05-28-03 date of accident are hereby dismissed with prejudice.

DONE AND ELECTRONICALLY MAILED this 17th day of July, 2008, in Pensacola, Escambia County, Florida.



Nolan S. Winn
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Pensacola District Office
700 South Palafox Street, Suite 305
Pensacola, Florida 32502
(850)595-6310
www.jcc.state.fl.us

Steven P. Pyle, Esquire
spyle@stevenpyle.com

Frank C. Bozeman, III, Esquire
fbozeman@bjm-law.com
mdurant@bjm-law.com