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

Jeffrey Snider,
Employee/Claimant,

vs.

Martin County Sheriff's Office/Florida Sheriffs Risk Management Fund (FSRMF),
Employer/Carrier/Servicing Agent.
_____/

OJCC Case No.: 19-002924KFO

Accident date: 9/16/2017

Judge: Keef F. Owens

FINAL COMPENSATION ORDER

This cause was heard before the undersigned in Fort Pierce, St. Lucie County, Florida on August 8, 2019, upon the two Petitions for Benefits filed on February 4, 2019 (Docket Number (DN) 1, 2). Suzanna M. Scarborough, Esq. was present on behalf of the claimant. Rex A. Hurley, Esq. was present on behalf of the employer/carrier.

The issues which remained to be addressed at the time of the hearing included:

1. Compensability of the Claimant's disabling heart disease/condition.

2. Authorization and payment of evaluation and treatment by a board certified cardiologist for the Claimant's disabling heart disease/condition.

3. Authorization and payment of TTD benefits from September 16, 2017, through October 2, 2017 (the indemnity claim was narrowed at the time of the hearing).

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

The following defenses were asserted:

1. Not compensable.

2. Presumption of compensability is rebutted by evidence of non-work related risk factors.

3. Work performed is not MCC of heart disease.

4. Claimant is MMI.

5. Loss of earnings not related to claimed accident or injury.

6. The E/C assert the reverse presumption under section 112.18(1)(b)1.a., in that he departed in a material fashion from the prescribed course of treatment of his personal physician and that departure resulted in a significant aggravation of his heart disease resulting in a disability, increasing disability or need for medical treatment. Specifically, on several occasions is it documented that the claimant failed to abide by his oral and/or insulin injections for his diabetes resulting in significantly elevated glucose and A1C levels over a lengthy period of time.

7. No costs or fees due.

The following documentary items were received into evidence:

Judge's Exhibits:

Exhibit #1: Petition for Benefits filed on February 4, 2019 (DN 1).

Exhibit #2: Petition for Benefits filed on February 4, 2019 (DN 2).

Exhibit #3: Response to Petition for Benefits filed on February 11, 2019 (DN 7).

Exhibit #4: Mediation Conference Report filed on May 15, 2019 (DN 16).

Exhibit #5: Uniform Statewide Pretrial Stipulation filed on May 21, 2019 (DN 17).

Exhibit #6: Pretrial Order and Notice of Final Hearing entered on May 21, 2019 (DN 18).

Exhibit #7: "Employer/Carrier's Trial Memorandum" filed on August 5, 2019 (DN 37) (admitted for argument purposes only).

Exhibit #8: "Claimant's Trial Memorandum" filed on August 6, 2019 (DN 38) (admitted for argument purposes only).

Claimant's Exhibits:

Exhibit #1: Deposition of Nancy Durrett taken on July 13, 2018, and exhibits filed on August 8, 2019 (DN 42).

Exhibit #2: Medical records filed on June 28, 2019 (DN 22, 24-28).

Exhibit #3: Deposition of Dr. Alexander Chernobelsky taken on July 24, 2019, and exhibits filed on July 30, 2019 (DN 35).

Exhibit #4: Pre-employment physical report filed on July 31, 2019 (DN 36).

Exhibit #5: Case law filed on August 6, 2019 (DN 39) (admitted for argument purposes only).

Employer/Carrier's Exhibits:

Exhibit #1: Deposition of Dr. Michele Libman taken on June 20, 2019, and exhibits filed on July 9, 2019 (DN 33) (admitted for fact purposes only).

Exhibit #2: Deposition of Dr. Michael Nocero taken on June 18, 2019, and exhibits filed on July 2, 2019 (DN 32).

Exhibit #3: Case law filed on August 6, 2019 (DN 40) (admitted for argument purposes only).

At the hearing, the sole live witness was the claimant, Jeffrey Snider. 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 witnesses' testimony and may not refer to each piece of documentary evidence, 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.

The undersigned has jurisdiction of the parties and the subject matter. The stipulations of the parties are adopted and shall become part of the findings of fact herein. The documentary exhibits offered by the parties are admitted into evidence and shall become part of the record, unless otherwise noted.

Factual background

This matter involves a claim for compensability of heart disease under section 112.18(1), Florida Statutes. The claimant, Jeffrey Snider, was born on September 5, 1962. He is employed by Martin County Sheriff's Office. He began his employment in 1984.

The claimant was diagnosed with high cholesterol when he was in his late 30s. The claimant was diagnosed with type II diabetes when he was approximately 42 years old.

The claimant's mother suffered from heart disease and diabetes. She had a heart attack at the age of 60. She passed away at age 73 of heart disease and diabetes.

Although he has held various assignments with his employer, since 2011 the claimant has been assigned to a courthouse. He works five days per week from 8:00 a.m. until 5:00 p.m.

The claimant receives physicals required by his employer. These are received at Treasure Coast Primary Care. On July 24, 2017, the claimant was seen at Treasure Coast Primary Care and reported discontinuing all medications three months earlier. He reported making lifestyle changes and losing more than twenty pounds.

On or about September 9, 2017, the claimant was placed on a special assignment and work schedule due to severe weather caused by a hurricane. He worked 12-hour shifts, monitored traffic, and performed patrol duty. On or about September 12, 2017, the claimant returned to his regular assignment at the courthouse.

On September 13, 2017, the claimant was seen at Treasure Coast Primary Care. It was noted that the claimant skipped some medication doses and insulin doses due to not having medication and a change in his plan; however, this same language appears in several previous notes. As a result, I am not willing to conclude that this note accurately reflects the claimant's medication usage as of September 13, 2017. The claimant testified that he reinitiated his medications upon the advice of his physician on July 24, 2017, and I accept his testimony in that regard. The claimant's diagnoses on September 13, 2017, included diabetes mellitus type II and mixed hyperlipidemia.

The claimant worked his regular work assignment on September 15, 2017, and left work at approximately 5:00 p.m.

On September 16, 2017, a Saturday, the claimant was at home. The recent storm caused a tree to fall in his yard. As a result, the claimant used a chainsaw to cut branches off of the tree. He then threw the branches into a trailer attached to his tractor.

While performing these activities, the claimant began sweating profusely. It became harder for him to breathe. He also had chest pressure. The claimant was taken by an emergency vehicle to Martin Memorial Hospital. During transport he was advised that he was having a heart attack.

At Martin Memoria Hospital, the claimant underwent catheterization. The claimant had a totally occluded right coronary artery. He also had a 99% lesion in the left circumflex artery. Both were treated with stents.

The claimant was discharged from the hospital on September 18, 2017. The first sentence of the claimant's discharge summary states that he had a past history of insulin-dependent diabetes mellitus and hyperlipidemia. His discharge diagnosis included ST elevation myocardial infarction due to total occlusion of right coronary artery status post drug eluding stent and 99% occlusion of left circumflex artery post drug eluding stent; diabetes mellitus II, insulin dependent; and hyperlipidemia.

The claimant was advised not to work for two weeks. He was permitted to return to work in a full duty capacity after that time. He returned to work on October 2, 2017. The claimant is currently back to his regular full duty work assignment.

On February 4, 2019, the claimant filed Petitions for Benefits seeking, in part, compensability of his disabling heart disease/condition. The claim was denied.

The employer/carrier retained Dr. Michael Nocero to serve as their independent medical examiner. Dr. Nocero evaluated the claimant on April 30, 2019. The relevant impression included coronary artery disease, history of acute inferior myocardial infarction treated with acute angioplasty of the RCA and circumflex coronary arteries, dyslipidemia, and type 1 diabetes mellitus. Dr. Nocero opined that the heart attack was due to type 1 diabetes mellitus and hypercholesterolemia working in concert to cause plaque in the right coronary artery as well as his circumflex coronary artery.

The claimant retained Dr. Alexander Chernobelsky to serve as his independent medical examiner. Dr. Chernobelsky's diagnosis included inferior wall ST elevation myocardial infarction with timely intervention to 100% occluded RCA and severely occluded circumflex artery; multi-level coronary artery disease; diabetes type II, insulin requiring; and hyperlipidemia. Dr. Chernobelsky indicated that he could not state the exact cause of the claimant's coronary artery disease and myocardial infarction within a reasonable degree of medical certainty, but he went on to conclude that the claimant's hyperlipidemia and diabetes could not have been the major determining factor in the development of coronary artery disease and the myocardial infarction.

Dr. Chernobelsky testified that the claimant reached maximum medical improvement on September 26, 2017. Dr. Nocero agreed that this was an appropriate MMI date.

Legal analysis

i. Compensability of heart disease

The claimant seeks a finding of compensability of his heart disease pursuant to section 112.18(1), Florida Statutes. This section provides, in relevant part:

> Any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation 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. However, any such firefighter or law enforcement officer must have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition. Such presumption does not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

Section 112.18(1), Fla. Stat.

There is no dispute that the claimant is entitled to the presumption. The issue is whether the employer/carrier have rebutted the presumption. There are two relevant conditions: coronary artery disease and the myocardial infarction of September 16, 2017. Dr. Nocero testified that both of these conditions are heart disease, and I accept his testimony.

a. Coronary artery disease

The claimant relies upon the statutory presumption to demonstrate compensability of his coronary artery disease, and I find that he is entitled to the presumption. As a result, the employer/carrier must present competent evidence to rebut the presumption. *See Punsky v. Clay County Sheriff's Office*, 18 So. 3d 577 (Fla. 1st DCA 2009). *See also City of Tarpon Springs v. Taporis*, 953 So. 2d 597 (Fla. 1st DCA 2007); *Lentini v. City of West Palm Beach*, 980 So. 2d

1232 (Fla. 1st DCA 2008). I accept the opinion of Dr. Nocero that the claimant's coronary artery disease was caused by several non-occupational factors.

In his written report, Dr. Nocero opined: "It is my opinion that his heart attack of 2017 was due to type 1 diabetes mellitus and hyper cholesterolemia working in concert *to cause plaque in his right coronary artery as well as his circumflex coronary artery*. Male patients with diabetes have *twice the risk of having plaque form in the coronary arteries* and this is what led to the acute inferior wall myocardial infarction which happened to this claimant in 2017. Hypercholesterolemia is also a major risk factor as part of the Framingham Risk Score making this factor one of the likely candidates for causing what happened in 2017." (emphasis added).

Consistent with his report, Dr. Nocero testified:

> QUESTION: Do you have an opinion as to what causes [sic] coronary artery disease, myocardial infarction, and need for stents on September 16, 2017?
>
> DR. NOCERO: It was my opinion that he had a multiplicity of risk factors, namely elevated cholesterol, Type 1 diabetes, a strong family history of coronary artery disease, and obesity, that *all came together to form plaque in his right coronary artery* that led to the total obstruction of that vessel and severe stenosis of the circumflex coronary artery. (emphasis added).

I accept Dr. Nocero's opinion that these non-work-related factors caused the claimant's coronary artery disease.

Notably, the opinion of Dr. Chernobelsky, the claimant's expert, was largely consistent with Dr. Nocero's opinion in this regard. On cross-examination by the employer/carrier, Dr. Chernobelsky was challenged regarding causation:

> QUESTION: And you're not able to say which specific risk factors he had contributed to or caused his heart disease, are you?
>
> DR. CHERNOBELSKY: No. *I can say which risk factors contributed to*. I cannot say which factors caused it.

> QUESTION: Okay. Well, that's a better way to say it then. So are you able to say that his diabetes, cholesterol and blood pressure contributed to his development of heart disease?
>
> DR. CHERNOBELSKY: I'm not sure about the blood pressure because I don't think that he was hypertensive previously to that. *Clearly, diabetes was a contributing factor. Clearly, cholesterol was a contributing factor.* Clearly, his age was a contributing factor. Clearly, you know, his gender and race to some extent were contributing factors.
>
> QUESTION: I see. And for those five items you just mentioned, cholesterol, diabetes, age, gender and race, those are not caused by his work or his work activities, are they?
>
> DR. CHERNOBELSKY. Not to my knowledge. (emphasis added).

Accordingly, out of the five factors cited by Dr. Chernobelsky, all were non-work-related.

Dr. Nocero explained the process by which cholesterol affects the lining of the arteries and facilitates the development of coronary artery disease. I accept his testimony in this regard.

The claimant's mother suffered a heart attack at age 60. The physicians ultimately agreed that this is considered a premature heart attack age for women. The claimant's heart attack occurred when he was 54 years old. This is considered a premature heart attack age for men. This supports Dr. Nocero's opinion regarding the claimant's family history.

Dr. Nocero's mistaken reference to the claimant suffering from Type I diabetes (when the claimant actually suffers from Type II diabetes) does not undermine his opinion. The evidence does not support the conclusion that Type I diabetes causes the development of coronary artery disease while Type II diabetes does not. Dr. Chernobelsky concurred that diabetes roughly doubles the chance of developing heart disease. More importantly, he testified that diabetes is understood to be the contributing cause to the accumulation of plaque.

I find that the claimant's *Daubert* objection was not sufficiently specific to justify the exclusion of the opinions of Dr. Nocero. A general objection (which only objected to "any opinion testimony that does not meet the requirements of . . . *Daubert*" and which did not even

cite Dr. Nocero) was asserted within the pretrial stipulation which was filed by the parties on May 21, 2019. Dr. Nocero was not deposed until June 18, 2019. During the deposition itself, the only *Daubert* objection asserted was a non-specific objection to the introduction of Dr. Nocero's report (when the court reporter apparently heard "Zalberg" rather than "Daubert"). There were no objections to Dr. Nocero's testimony. Accordingly, I find that no *Daubert* objections were preserved. *See Booker v. Sumter County Sheriff's Office*, 166 So. 3d 189 (Fla. 1st DCA 2015).

I reject Dr. Chernobelsky's analysis within his written report in which he concluded that the claimant's diabetes and hyperlipidemia could not have been the major determining factor in the development of coronary artery disease. Specifically, he reasoned that a heart attack risk calculator increased the risk of heart attack or stroke by 6.9% when the patient suffers from diabetes and by 1.5% when the patient suffers from hyperlipidemia. Therefore, he concluded that the claimant's total increase in likelihood of a heart attack or stroke was 9.6% (although it seems that using his methodology, the figure should be 8.4%). In any event, assuming 9.6% is the correct figure, he reasoned that 9.6% if far below the 50% major contributing cause threshold, so diabetes and hyperlipidemia could not have been the cause of the claimant's coronary artery disease and heart attack.

First, major contributing cause is not the correct standard. Second, the percentage likelihood that someone exhibiting a specific risk factor will suffer from coronary artery disease does not necessarily mean that after that person has actually developed coronary artery disease that the same percentage is valid with respect to apportionment of causation. Finally, it appears

that Dr. Chernobelsky retreated from this analysis during his deposition, at which time he testified that the cause of the coronary artery disease could not be known.

For all the foregoing reasons, I find that the employer/carrier have successfully rebutted the presumption that the claimant's coronary artery disease is compensable. I find that the claimant's coronary artery disease is not compensable.

b. Myocardial infarction of September 16, 2017

The claimant also seeks a determination that his myocardial infarction of September 16, 2017, is compensable. There is no dispute that the presumption applies with respect to this form of heart disease. In any event, the claimant presented sufficient evidence to establish entitlement to the presumption. The issue is whether the employer/carrier have rebutted the presumption.

Dr. Chernobelsky testified an ST elevation myocardial infarction is usually caused by plaque rupture. Plaque rupture is the most common cause of acute occlusion of coronary artery disease. Dr. Chernobelsky assumed this is what happened on the date of the claimant's accident. Dr. Nocero's testimony reveals that he also believes a plaque rupture caused the claimant's myocardial infarction.

Dr. Chernobelsky testified that there is no way to state within a reasonable degree of medical certainty the cause of a plaque rupture. He conceded that he did not know what caused the claimant's plaque rupture. He agreed that mental and physical stress could be the cause of plaque rupture. He agreed that working long shifts at the time of the hurricane could have increased the risk of plaque rupture. He also agreed that the claimant's physical activities at home could have caused the plaque rupture. Dr. Nocero, on the other hand, testified that it is unknown whether severe physical exercise leads to plaque rupture.

The resolution of this issue requires an examination of *Mitchell v. Miami Dade County*, 186 So. 3d 65 (Fla. 1st DCA 2016), and *City of Jacksonville v. Ratliff,* 217 So. 3d 183 (Fla. 1st DCA 2017).

In *Mitchell*, the claimant had a congenital slow accessory pathway. He suffered an episode of supra ventricular tachycardia (SVT), which is a manifestation of the congenital condition. The First District Court of Appeal noted that there was evidence that the slow accessory pathway must be triggered by something to result in an episode of SVT. The court held the JCC erred by concluding that because the slow accessory pathway was congenital (i.e., non-work-related) that the trigger must also be congenital. The court concluded that the JCC must also determine "whether the Employer overcame the presumption by establishing by competent evidence that the trigger was also non-occupational." *Id.* at 68.

In the instant case, this same analysis seemingly applies. Although it has been determined that the claimant's coronary artery disease is not work-related (like the slow accessory pathway in *Mitchell*), the evidence supports the conclusion that the myocardial infarction occurred when something caused (i.e., triggered) a portion of plaque (i.e., the coronary artery disease) to break away. Therefore, the employer/carrier must show that the trigger was not work-related in order to avoid the presumption.

In fact, the First District Court of Appeal has already applied the analysis of *Mitchell* in the context of a heart attack caused by a plaque rupture. Specifically, in *City of Jacksonville v. Ratliff,* 217 So. 3d 183 (Fla. 1st DCA 2017), the claimant was diagnosed with coronary artery disease and acute anterior wall myocardial infarction. The claimant qualified for the presumption. The court concluded that the employer/carrier met the burden of rebutting the

presumption that the coronary artery disease was work-related. Specifically, the employer/carrier's expert testified that the claimant had risk factors which rose to the level of causative factors and were not work-related.

The court then noted:

> Here, the Claimant suffered from an underlying condition, CAD. On the date of accident, the underlying CAD resulted in a plaque rupture (triggering event) and the Claimant suffered a myocardial infarction, the heart disease requiring treatment.

Both experts agreed that the cause of the plaque rupture was unknown. Although it could have been a work event, it was speculative that a work event caused the plaque rupture.

As a result, the court concluded that although the employer/carrier satisfied its burden of providing competent evidence that the causative factors of coronary artery disease were non-work-related, the employer/carrier were also required to overcome the presumption that the trigger was work-related. The court stated:

> Once a claimant gives rise to the presumption by satisfying the pre-requisites of section 112.18, occupational causation is established; therefore, there is no requirement on the part of the claimant to put on further proof meeting the requirements of section 440.151, Florida Statutes, as it relates to a "trigger."

Accordingly, the court concluded the employer/carrier failed to meet its burden, because the employer/carrier could not, by competent evidence, show that all possible factors causing the triggering event (i.e., the plaque rupture) were non-work-related, so the presumption prevailed.

This is very similar to the instant case. The undersigned has concluded that the claimant's coronary artery disease was caused by non-work-related factors. Like the claimant in *Ratliff,* I find that the claimant in the instant case suffered a heart attack following a plaque rupture. As in *Ratliff*, the evidence in the instant case supports the conclusion, and I find, that the

cause of the rupture is unknown. Therefore, the employer/carrier have not met their burden of overcoming the presumption afforded the claimant that the triggering event was work-related.

The employer/carrier argue that *Ratliff* does not apply. They point toward footnote 11. Footnote 11 concludes by stating: "Although the specific cause(s) of the trigger may not be identifiable, work-relation may be excluded *if the claimant cannot causally connect the 'trigger event' to work activities*." (emphasis added). This statement suggests *the claimant* must causally connect the triggering event to workplace activities.

This statement is difficult to reconcile with *Mitchell'*s conclusion that a JCC must determine "whether the Employer overcame the presumption by establishing by competent evidence that the trigger was also non-occupational." *Mitchell* suggests *the employer/carrier* must demonstrate that the triggering event was not work related.

Footnote 11 within *Ratliff* is also difficult reconcile with another statement within *Ratliff*. Specifically, that "[o]nce a claimant gives rise to the presumption by satisfying the pre-requisites of section 112.18, occupational causation is established; therefore, *there is no requirement on the part of the claimant* to put on further proof meeting the requirements of section 440.151, Florida Statutes, as it relates to a 'trigger.'" (emphasis added).

In summary, while footnote 11 suggests that the claimant has some burden of causally connecting the trigger to work activities, the statutory language, *Mitchell*, and the initial statement within *Ratliff* suggest that so long as the claimant satisfies the prongs of the statutory presumption, the claimant has no additional burden with respect to the trigger and it is incumbent upon the employer/carrier to demonstrate that the trigger is not work-related.

Accordingly, the undersigned concludes that the statutory language and the case law require the employer to rebut the presumption afforded the claimant with respect to the trigger. In the instant case, the employer/carrier have not met that burden.

In the instant case, Dr. Chernobelsky testified that there was no way to state within a reasonable degree of medical certainty the cause of plaque rupture. I accept this testimony. He testified that the stress of working long shifts during the hurricane-related weather (i.e., a work-related cause) could have caused the plaque rupture, but physical work performed at home on the date of the heart attack (i.e., non-work-related cause) could have caused the plaque rupture. I also accept this testimony. Dr. Nocero did not testify that the work at home caused the plaque rupture. In fact, he testified that it is unknown whether significant physical exertion leads to plaque rupture. Based upon the evidence presented in this matter, I find that the cause of the rupture is unknown.

This does not mean that the statute creates an irrebuttable presumption. The statute does not fail to provide a means to rebut the presumption. *Compare Recchi America, Inc. v. Hall*, 692 So. 2d 153 (Fla. 1997). On the contrary, the statute specifically provides that the presumption can be rebutted. In the instant case, there simply was insufficient evidence, accepted by the undersigned, to rebut the presumption. In the instant case, Dr. Chernobelsky testified that the cause of the plaque rupture could not be known. In another case, an expert may be able to identify the cause of the plaque rupture. For example, in the instant case, when solely looking at the opinion of Dr. Chernobelsky with respect to coronary artery disease, it appears that the employer/carrier have an "irrebuttable presumption." Specifically, Dr. Chernobelsky opined that

the cause of coronary disease cannot be known. However, Dr. Nocero testified that the cause can be known, and the undersigned accepted his testimony.

The employer/carrier also try to distinguish *Ratliff* by arguing that the heart attack in *Ratliff* occurred at work while the heart attack in the instant case occurred at home. The presumption applies regardless of whether the heart attack takes place at work or elsewhere. There is nothing in the statutory language setting out the four prongs that the claimant must demonstrate in order to secure the presumption that addresses the location of the event. The location may certainly be relevant if an expert can opine that the location, or activities engaged in at that location, suggests the accident was work-related or not work-related; however, the location does not *ipso facto* change the analysis.

The employer/carrier also argue that benefits are not due by operation of section 112.18(1)(b)1.a., Fla. Stat. They argue that the claimant's failure to comply with his treatment for diabetes requires application of the "reverse presumption" (i.e., a presumption that the heart disease is *not* caused by the claimant's employment).

Section 112.18(1)(b)1.a. provides:

> For any workers' compensation claim filed under this section and chapter 440 occurring on or after July 1, 2010, a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), or (3) suffering from tuberculosis, heart disease, or hypertension is presumed not to have incurred such disease in the line of duty as provided in this section if the law enforcement officer, correctional officer, or correctional probation officer:
>
> a. Departed in a material fashion *from the prescribed course of treatment* of his or her personal physician and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment;

(emphasis added).

"Prescribed course of treatment" is defined by section 112.18(1)(b)2. It "means prescribed medical courses of action and prescribed medicines *for the specific disease or diseases claimed* and as documented in the prescribing physician's medical records." (emphasis added).

As a result, the condition for which the claimant materially departed from the prescribed course of treatment must be the same condition which the claimant seeks to have deemed compensable. In the instant case, the specific diseases claimed in this matter are cardiological in nature. The claimant does not claim that his diabetes is a compensable condition. As a result, even if the claimant failed to comply with his treatment regimen for diabetes, this would not serve as a basis for applying the reverse presumption appearing at section 112.18(1)(b)1.a., Fla. Stat.

Alternatively, if section 112.18(1)(b)1.a., Fla. Stat., applies when there is a failure to abide by the treatment plan for a condition other than the condition for which the claimant seeks compensability, I find there is insufficient evidence that (1) the claimant materially departed from his prescribed course of treatment and (2) the departure resulted in a significant aggravation of the heart disease resulting in disability or increasing the disability or need for treatment.

The claimant's testimony, as well as the medical records submitted, suggests that any departure from the prescribed course of treatment was temporary. Specifically, the claimant would occasionally interrupt his diabetes treatment when his insurer refused to cover his medication. He also reduced his medications when he made lifestyle changes in an effort to reduce his dependence on medication. For example, he lost weight (resulting in a loss of at least twenty pounds). When he was advised that despite his lifestyle changes he still required the use

of medication, he reinitiated the use of medication. I do not find that the temporary discontinuance of medications and attempt to control his diabetes through lifestyle changes were material departures from his prescribed treatment.

Furthermore, these actions have not been shown to have resulted in a significant aggravation of heart disease resulting in disability or increasing the disability or need for treatment. I accept Dr. Chernobelsky's opinion that being off of medications for three months while attempting lifestyle modifications would not cause a significant aggravation of the claimant's coronary artery disease. I also accept his testimony that the only medication he believed would cause an aggravation leading to myocardial infarction would be a medication to treat platelet aggregation (thereby excluding the medications for diabetes which the claimant temporarily suspended).

I reject Dr. Nocero's opinions regarding the claimant's pre-date of accident medication use (or non-use) and its alleged effect on the claimant's conditions. He testified that drugs including "probably" insulin "have something to do" with keeping endothelial cells functioning correctly. I find that Dr. Nocero's explanation for how the claimant's failure to use medications caused a heart attack to be a hypothesis rather than an opinion stated within a reasonable degree of medical certainty.

I also reject the notion that Dr. Nocero can tell that the extent of the claimant's departures from his recommended course of treatment (which themselves are not entirely clear) were sufficient to cause the claimant's heart attack. This is especially true when the claimant testified that after his July 24, 2017, appointment he took his medications consistently. Furthermore, Dr. Nocero conceded he knew of no studies supporting his theory.

For all the foregoing reasons, I find that the claimant's September 16, 2017, myocardial infarction was compensable.

ii. Authorization of a board certified cardiologist

The claimant seeks authorization of a board certified cardiologist. The claim for compensability of coronary artery disease has been denied. As a result, the claim for authorization of a cardiologist would relate solely to the compensable September 16, 2017, myocardial infarction. No medical necessity defense was asserted within the pretrial stipulation. *See Knight v. Walgreens*, 109 So. 3d 1224 (Fla. 1st DCA 2013).

At a minimum, the claimant is entitled to an evaluation with a cardiologist to determine what treatment, if any, is required as a result of his myocardial infarction of September 16, 2017.

For all the foregoing reasons, the claim for authorization of a board certified cardiologist is granted in part. The employer/carrier shall authorize a board certified cardiologist to evaluate and treat, if necessary, the claimant for his compensable myocardial infarction of September 16, 2017.

iii. Temporary total disability benefits from September 16, 2017, through October 2, 2017

Finally, the claimant seeks temporary total disability indemnity benefits from September 16, 2017, through October 2, 2017.

The claimant testified that he was taken out of work for two weeks. I accept his testimony. The claimant's disability did not reach 21 days. As a result, he is not entitled to temporary total disability benefits for the 7-day waiting period.

Dr. Chernobelsky testified that the claimant reached maximum medical improvement on September 26, 2017. Dr. Nocero agreed that this was an appropriate MMI date. I find that the claimant reached MMI on September 26, 2017.

Therefore, the claimant is entitled to TTD benefits from September 23, 2017, through September 26, 2017.

It is **ORDERED and ADJUDGED**:

1. The claim for compensability of heart disease is granted in part. The claim for compensability of coronary artery disease in denied. The claim for compensability of the myocardial infarction of September 16, 2017, is granted.

2. The claim for authorization and payment of evaluation and treatment by a board certified cardiologist for the claimant's disabling heart disease/condition is granted in part. The employer/carrier shall authorize a board certified cardiologist to evaluate and treat, if necessary, the claimant for his compensable myocardial infarction of September 16, 2017.

3. The claim for authorization and payment of TTD benefits from September 16, 2017, through October 2, 2017, and penalties and interest is granted in part. The employer/carrier shall pay the claimant TTD benefits from September 23, 2017, through September 26, 2017, plus penalties and interest.

4. The claim for attorney's fees and costs is granted. The undersigned reserves jurisdiction with respect to the amount of attorney's fees and costs in the event the parties cannot amicably resolve the same.

Done and electronically served on Counsel and Carrier this August 27, 2019, in Fort Pierce, St. Lucie County, Florida.

Keef F. Owens
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