

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

John Pintavalle,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 08-003300DSR
)	
Pasco County Board of County)	Accident date: 3/8/2007
Commissioners,)	
)	
Employer,)	
)	
and)	
)	
Commercial Risk Management, Inc.,)	
)	
Carrier/Serviceing Agent.)	
_____)	

FINAL COMPENSATION ORDER

THIS CAUSE was heard before the undersigned at St. Petersburg, Pinellas County, Florida on November 5, 2008, upon the Claimant's claims for determination of compensability under F.S.112.18; temporary total disability from March 8, 2007 to July 2, 2007 at a compensation rate of \$724.00 per week; payment of incurred medical expenses, authorization, provision and payment of a board certified cardiologist; impairment benefits of \$253,400.00 due under Section 440.15(3)(a)3; penalties, interest, costs and attorney's fees. The Petitions for Benefits were filed on February 5, 2008, and September 17, 2008. Mediation occurred on October 16, 2008, and the parties' pretrial compliance questionnaire was filed October 24, 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 the statutory presumption in F.S.112.18 is not applicable in this case, alternatively, the competent substantial evidence will show cause of Claimant's condition is not related to his employment, E/C can overcome the presumption; stroke not covered under Section 112.18; accident, if any, is not the major contributing cause of the Claimant's condition, need for treatment, if any, or disability; statutory presumption is unconstitutional as evidence suggests it is irrebuttable, Claimant does not qualify for a permanent impairment rating under the Florida Guides so impairment benefits are denied; E/C seeks costs if they prevail; that no penalties, interest, 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 October 27, 2008, together with the documentary items required by Rule 9.180 (Court's Exhibit #1).
2. Deposition of Patrick Mathias, M.D., taken September 25, 2008 (Claimant's Exhibit #1).
3. Deposition of Dena McKenzie, taken October 1, 2008 (Claimant's Exhibit #2).
4. Composite Medical Expenses (Claimant's Exhibit #3)
5. Deposition of John Pintavalle, taken March 6, 2008 (Employer/Carrier's Exhibit #1).
6. Deposition of Brian Pierpont, M.D., taken July 16, 2008 (Employer/Carrier's Exhibit #2).
7. Deposition of Brian Pierpont, M.D., taken October 23, 2008 (Employer/Carrier's Exhibit #3).
8. Notice of Injury (Employer/Carrier's Exhibit #4).

9. Inter-office Memo (Employer/Carrier's Exhibit #5).

10. Medical Composite (Employer/Carrier's Exhibit #6).

At the hearing, the Claimant, John Pintavalle, 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 Claimant's accident or injuries as compensable. The Claimant asserts that he suffers from cardiovascular disease and that he suffered a stroke, both of which should be compensable pursuant to the statutory presumption afforded by Florida Statutes Section 112.18.

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 attained maximum medical improvement on May 12, 2008, with a 60% permanent impairment rating for hypertensive cardiovascular disease and 20 % for heart disease as found by Dr. Mathias. It was the Employer/Carrier's position that MMI was reached with a 0% permanent impairment rating as found by Dr. Pierpont.

6. The parties stipulated that if the claim was found to be compensable that they would attempt to administratively handle the payment of the outstanding medical bills based on the evidence as it existed at the time of the Final Hearing. Jurisdiction is reserved on the amounts if the parties are unable to agree.

7. One of the issues in this claim is timely notice. The parties stipulated that in August of 2007, the Claimant submitted a notice of injury form. The Employer/Carrier asserted that the Notice of Injury form was untimely.

8. The Claimant is employed with Pasco County as a Corrections officer. The Claimant was hired in February of 1991 and underwent a pre-employment physical. Both physicians who have testified in this claim have indicated that there was no evidence of hypertension or heart disease shown on the pre-employment physical.

9. On March 8, 2007, in the morning, the Claimant was at home, making coffee for his wife when he noticed that he couldn't hold the spoon. When he attempted to speak his voice was slurred. The Claimant's wife gave him 2 aspirins and drove him to the hospital. The records of Oak Hill Hospital have been received into evidence. The records indicate that the Claimant reported being on aspirin therapy, but had stopped two weeks prior due to needing a prostate biopsy. The evaluation indicated that the Claimant may have had a cerebrovascular accident. He was admitted and underwent CT testing with showed narrowing of the carotid arteries. An echocardiogram performed on March 9, 2007, showed normal size and systolic function of the left ventricle, ejection fraction 63%, inferoposterobasal aneurysm, normal intracardiac valve and normal dopplex evaluation. The Claimant's past medical history was significant for dyslipidemia, coronary artery disease status post percutaneous transluminal coronary

angioplasty and stent placement, hypertension, and glucose intolerance. He was taking Metoprolol, Zetia, aspirin, Avodart, and medications for anxiety upon admission. His social history was positive for smoking cigars. His family history was significant for coronary artery disease. The Claimant's blood pressure was 149 over 86. The Claimant was diagnosed with left hemispheric cerebrovascular accident and a workup for CVA was recommended. The doctor also recommended the Claimant stop smoking cigars and exercise regularly. It was also noted that the Claimant's blood sugar was high as well so Accu-Chek with sliding scale insulin coverage was recommended.

10. On March 8, 2008, a carotid duplex study was performed revealing evidence of minimal stenosis of the right ICA and moderately severe stenosis of the left ICA, the available velocities indicate a diameter reduction of 1-5-% at the right ICA, vertebral flow was antegrade with moderate velocities, minimal plaquing was seen at the right bulb and moderately large irregular plaque was seen at the left bulb and ICA. On March 12, 2007, a left carotid endarterectomy with patch and angioplasty and electroencephalogram monitoring was performed by Dr. Piduru, a cardiovascular surgeon, at Oak Hill Hospital . The Claimant's preoperative and postoperative diagnosis was severe left carotid stenosis with transient ischemic attacks. On March 14, 2007, the Claimant was evaluated by Dr. Nagarajan for urinary retention. It was noted that the Claimant was known to have an enlarged prostate and he was taking Flomax and Avodart. Dr. Nagarajan discharged the Claimant home and increased his medications.

11. The Claimant was discharged from the hospital on March 15, 2007, with the following final diagnoses: cerebrovascular accident, severe carotid artery disease, status post left carotid endarterectomy, coronary artery disease, status post previous inferior myocardial

infarction, status post percutaneous transluminal coronary angioplasty across the right coronary artery, hypertension, hyperlipidemia, history of glucose intolerance, and urinary retention, probably secondary to prostate enlargement. The Claimant was discharged with the following medications: Zetia, Flomax, BuSpar, Lopressor, Avodart, aspirin, and multivitamins. Due to the Claimant's hyperlipidemia, treatment with statins was recommended but the Claimant refused. It was recommended the Claimant maintain a low salt and low cholesterol diet and follow-up with his primary care physician.

12. The Claimant has been treating with Dr. Pirello, a primary care physician from the Medical Associates of West Florida since January 1997. On June 11, 1997, the Claimant had a blood pressure reading of 158 over 92 and 134 over 92 on June 16, 1997. Dr. Pirello diagnosed the Claimant with hypertension on March 13, 1998, and recommended the Claimant test his glucose levels. The records show the Claimant was diagnosed with mild hypertension on April 15, 1998, and his blood pressure reading on that day was 130 over 90.

13. The Claimant had a heart attack on March 27, 1999 and went to Oak Hill Hospital. The Claimant was not at work at the time of his heart attack; rather, he was on the golf course when it occurred. On March 27, 1999, the Claimant presented to Oak Hill Hospital complaining of chest pain. The records show that the Claimant felt nauseous and then he had severe pain extending from the right arm across his chest with some shortness of breath and swelling. At the hospital, the Claimant denied any prior history of heart disease, chest pain, and shortness of breath. In fact, the Claimant indicated that he had been very healthy and had not seen a doctor for a long time. The Claimant did admit to smoking cigars and indicated that he had a family history for cardiovascular disease and hyperlipidemia. Upon examination, it was noted that the

Claimant had acute evolving inferior wall infarction. A chest X-ray was performed on March 27, 1999, that showed the Claimant did not have an enlarged heart, no focal lung infiltrate or pleural effusion, lung aeration appeared normal, and tortuosity thoracic aorta.

14. On March 31, 1999, Dr. Chalavarya, a cardiologist, at Bayonet Point Regional Medical Center, performed a left heart catheterization, selective coronary angiography, and left ventriculogram due to angina inadequately controlled by medications. On that same day, two Duet stents were successfully placed in the mid right coronary artery. Following the heart attack, the Claimant returned to Medical Associates of West Florida. The Claimant saw Dr. Pirello, a primary care physician, on April 12, 1999, and he noted that the Claimant had coronary artery disease. The Claimant's blood pressure reading was 120 over 70. Dr. Pirello recommended the Claimant continue his medications and follow-up with a cardiologist. An exercise stress test was performed on April 6, 2000, at Gulf Cardiology Associates and the results were negative by symptoms and EKG and there were no atrial or ventricular arrhythmias. A thallium rest/gated myoview stress showed a small scar present in the septal wall of the left ventricle which continues in resting images. The Claimant returned to Dr. Pirello on July 12, 1999, and his blood pressure reading was 110 over 80. It was also noted the Claimant had increased lipids. On August 12, 1999, Dr. Pirello noted that the Claimant's anxiety was controlled and his blood pressure was 140 over 70.

15. The Claimant was evaluated by Dr. Augustine, a cardiologist, on December 12, 2000, and he was following the Claimant for coronary artery disease manifested by an inferior myocardial infarction from March 1999. The Claimant had a stable cardiac status and he was to continue on the same treatment.

16. On June 27, 2001, the Claimant presented to Oak Hill Heart Associates for a yearly follow-up visit. It was noted that the Claimant had a history of atherosclerotic heart disease, status post myocardial infarction, history of hyperlipidemia and borderline hypertension. The Claimant's family history was significant for atherosclerotic heart disease in his mother and diabetes in the maternal side of the family. The Claimant was a former smoker and his blood pressure was 118 over 80. The Claimant was diagnosed with mild CHF in a man with a history of atherosclerotic heart disease, history of hypertension, and borderline hypertension. Dr. Warman prescribed the Claimant Lasix, potassium chloride and recommended an echocardiogram.

17. The Claimant was evaluated by Dr. Chalavarya on October 31, 2002, regarding coronary artery disease. The Claimant's blood pressure was 122 over 80. Dr. Chalavarya diagnosed the Claimant with stable coronary artery disease, hypercholesterolemia, and erectile dysfunction. He recommended the Claimant continue with the same medications and added Viagra. On April 24, 2003, the Claimant returned to Dr. Chalavarya. The Claimant was doing well and was physically active. His diagnosis remained the same and he recommended a lipid profile. The Claimant saw Dr. Chalavarya on April 24, 2003, for a follow-up. His blood pressure was normal. Dr. Chalavarya diagnosed the Claimant with stable coronary artery disease and hypercholesterolemia. He advised the Claimant to have a lipid profile and continue his present medications.

18. A stress test was performed on September 10, 2004, and it was negative myocardial scan for reversible ischemia and normal left ventricular ejection fraction of 54% and gated scan showed normal left ventricular wall motion. The Claimant was seen by Dr. Chalavarya on

January 14, 2005, for a follow-up of coronary artery disease and hypercholesterolemia. Dr. Chalavarya noted that the Claimant had asymptomatic coronary artery disease with a recent negative stress test, hypercholesterolemia was not at goal and his cholesterol was 242. Dr. Chalavarya felt the Claimant needed lipid-lowering medications because his LDL could not be corrected with diet alone.

19. After the Claimant's stroke in 2007, he returned to Dr. Pirello on March 16, 2007. The Claimant's blood pressure was controlled at 124 over 80 and Dr. Pirello noted that the Claimant's ischemic stroke was improving but his hyperlipidemia was uncontrolled.

20. The Claimant returned to Dr. Augustine, of Oak Hill Heart Associates, on March 27, 2007, for a re-evaluation. The Claimant's blood pressure was 110 over 80. An echocardiogram revealed normal size and systolic function of the left ventricle, ejection fraction 64%, inferoposterior basilar aneurysm, normal intracardiac valves, and normal Doppler evaluation. Dr. Augustine recommended the Claimant maintain the same treatment. The Claimant returned on April 24, 2007, he had recently undergone prostate surgery. The Claimant's blood pressure was 108 over 70. The Claimant was cleared for work and advised to continue to the same treatment.

21. An exercise cardiac nuclear perfusion scan was performed on May 1, 2007, revealing normal cardioline SPECT myocardial perfusion study. The Claimant saw Dr. Augustine on May 8, 2007, and reviewed the recent stress test. Dr. Augustine felt the Claimant was stable from a cardiac standpoint and the Claimant should continue the same medications and return in six months.

22. On November 13, 2007, the Claimant returned to Dr. Pirello regarding coronary artery disease, elevated prostate specific antigen, hyperlipidemia, and ischemic stroke. It was noted that the Claimant has no further right-sided weakness. The Claimant's blood pressure was 100 over 62. Dr. Pirello diagnosed the Claimant with elevated prostate specific antigen, hyperlipidemia, coronary artery disease, ischemic stroke, and hypertrophy prostate without obstruction. He recommended the Claimant continue to taking Buspar Dividose, Flomax, Lipitor, Lopressor, and Viagra.

23. In order to investigate the nature of the Claimant's condition, the Employer/Carrier sent the Claimant to Dr. Brien Pierpont for an independent medical examination. The Claimant was evaluated by Dr. Pierpont on July 1, 2008. Dr. Pierpont reviewed records from Oak Hill Hospital, Dr. Pirello, Dr. Chalavarya, Dr. Augustine, and Bayonet Point Regional Medical Center in preparation of the Claimant's examination. Dr. Pierpont was aware that the Claimant had a heart attack in 1999 and had a stent to treat that problem. Dr. Pierpont was aware that the Claimant's family history is positive for heart disease and high blood pressure in his mother and that his father passed away from gastric cancer. Dr. Pierpont stated, in deposition, that the Claimant's family history was relevant because it could have been one of the risk factors that he had for the development of high blood pressure and heart disease. According to Dr. Pierpont, the only noteworthy factor from the Claimant's physical examination on July 1, 2008, was a mild elevation of blood pressure. The Claimant's blood pressure reading at the time of the evaluation was 133 over 77. Dr. Pierpont diagnosed the Claimant with a transient ischemic attack or possible stroke on March 8, 2007, followed by left carotid endarterectomy on March 12, 2007, coronary arterial disease with an inferior wall heart attack treated with thrombolytic therapy and

stenting, essential hypertension, dyslipidemia, borderline mellitus and prostatic hypertrophy. Dr. Pierpont felt the cause of the Claimant's essential hypertension was genetic predisposition because there was no definitive secondary cause for this blood pressure elevation. Since the Claimant's mother had high blood pressure she could have passed this on to the Claimant, according to Dr. Pierpont. Dr. Pierpont testified that the cause of the Claimant's heart disease was his essential hypertension and genetic makeup. Dr. Pierpont also testified that the Claimant's dyslipidemia and diabetes contributed to the Claimant's heart disease and essential hypertension.

24. Dr. Pierpont did not feel that job stress was of great significance because there were other causes that contributed to the Claimant's heart disease. Dr. Pierpont was of the opinion that the Claimant would have developed hypertension and heart disease regardless of whether or not he was employed as a corrections officer. Dr. Pierpont was questioned about the Claimant's employment as a corrections officer. Dr. Pierpont felt the Claimant enjoyed his job, he did not dread going to work, and he was not under an undue amount of stress. Based on the review of medical records and his conversations with the Claimant, Dr. Pierpont did not feel the Claimant was under any on-the-job stress, either now or in the past.

25. Dr. Pierpont testified that the Claimant did not qualify for an impairment rating as related to essential hypertension and coronary artery disease since there was no evidence that he had diastolic blood pressure readings that were consistently in excess of 90 mm Hg. Although, Dr. Pierpont previously thought the Claimant qualified for a Class III impairment, he did not correctly evaluate the Claimant's condition under the Florida Impairment Rating Guide. Clearly, under a Class III impairment the injured worker must have a diastolic pressure reading in excess

of 90, he would not qualify for a permanent impairment rating under the Florida Impairment Rating Guide.

26. Dr. Pierpont was of the opinion that there is no difference between a "cause" and a "contributing factor" because a risk factor is an entity which is known statistically to be contributory to a certain type of pathology. In Dr. Pierpont's opinion, it is within a medical probability that the cause of the Claimant's hypertension is genetic. Dr. Pierpont testified that it was reasonable, as a cardiologist, to formulate opinions based upon probabilities and not solely on scientific physical tests that are performed on patients. Dr. Pierpont agreed that if an individual overexerted himself and, as a result of the overexertion, had a heart attack, that there would be no scientific test to prove the cause of the heart attack. However, Dr. Pierpont testified that the overexertion would be the cause of the heart attack within reasonable medical probability and conjecture. This is the same reasoning and analysis that Dr. Pierpont applied to the Claimant's case. Just like an individual can have a heart attack from overexertion, the Claimant in this case suffered a stroke and heart disease as a result of essential hypertension, genetics, diabetes, and dyslipidemia. Dr. Pierpont's opinions are consistent with the medical standard used in the workers' compensation statute and his opinions should be relied upon in determining the issues in this case.

27. The Claimant was also evaluated by Dr. Patrick Mathias, a cardiologist, who performed an Independent Medical Examination on behalf of the Claimant on May 13, 2008. In preparation for the IME Dr. Mathias reviewed the pre-employment physical, office notes from the Medical Associates of West Florida, hospital records from Oak Hill Hospital and Dr. Augustine, as well as notes pertaining to the hospitalization for the TIA and stroke in 2007, stress

test and cardiac testing, and the CT angiograms, echocardiograms, and catheterization procedures, and blood work. Dr. Mathias noted a medical history of essential hypertension since the mid-1990's, hyperlipidemia since 1999, history of anxiety, enlarged prostate, cataract extraction, migraine headaches, and hemorrhoids. Dr. Mathias' physical examination was normal and the Claimant's blood pressure was normal at 120 over 70. Dr. Mathias diagnosed the Claimant with coronary artery disease, status post inferior MI, with a PTCA of RCA, cerebrovascular disease, status post TIA left carotid endarterectomy, essential hypertension, and dyslipidemia. Dr. Mathias testified that within a reasonable degree of medical certainty that the Claimant had heart disease as evidenced by the above diagnoses. Dr. Mathias testified that essential hypertension is high blood pressure for which a cause is not evident. In addition, Dr. Mathias testified in deposition that there is no known cause for coronary artery disease, cerebrovascular disease, and essential hypertension, only multiple risk factors. Dr. Mathias testified that he would have kept the Claimant out of work for a month after a stroke. Dr. Mathias felt the Claimant was at MMI as of May 12, 2007, and he was not in need of any restrictions because the Claimant had a negative nuclear stress test and his neurological status was stabilized. Dr. Mathias testified that since the Claimant had had a stroke that he qualified for a Class 4 impairment rating and referred to page 121 of the Florida Impairment Guide when assigning a 60% permanent impairment rating to the Claimant for cardiovascular hypertension and a 20% impairment rating for coronary heart disease, despite the fact that the Claimant's blood pressure was normal at 120 over 70.

28. Although Dr. Mathias said there was no known cause of cerebrovascular disease, he was of the opinion that there are risk factors that can lead to a cerebrovascular disease. Dr.

Mathias was also asked questions regarding risk factors versus causation. Dr. Mathias testified that a physician could never say that risk factors caused cerebrovascular disease because there are individuals that have the same risk factors that never develop cerebrovascular disease. Dr. Mathias based his opinions regarding causation on Cox's postulate. Dr. Mathias is of the opinion that in order to state a "cause" there has to be a clear and inevitable link and medical science has not established such a link with heart disease.

29. There is much discussion in both of the depositions about risk factors versus causation. Caselaw makes it clear, as does Dr. Mathias's testimony, that risk factors do not equal causation. Unfortunately, Dr. Pierpont uses the two terms interchangeably. As such, it is impossible to align his testimony with the caselaw on this point. Based on the totality of the evidence before me, I find that the Claimant has established that while he certainly has "risk factors," no physician has been able to establish a "cause" for the Claimant's conditions. It seems that this is exactly the type case that the Legislature intended when it established the presumption under Florida statutes Section 112.18. Both Dr. Mathias and Dr. Pierpont agree that the Claimant has cardiovascular disease and hypertension. While Dr. Pierpont testifies that he is of the opinion that the Claimant's condition is most likely caused by genetics, that testimony does not rise to the level of establishing causation. In fact, Dr. Pierpont even acknowledges that the Claimant's employment is a factor, even though he lists it as a minor contributing factor. Dr. Pierpont also confirms that the essential hypertension is arterial in nature affecting the cardiovascular system.

30. Florida Statutes Section 112.18 (2007), provides that "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." As stated in the statute and case law, the Claimant must prove four elements for the presumption to apply:

A. That he is a member of the protected class.

The Claimant falls within the protected class as a law enforcement officer;

B. That he developed a covered condition.

The Claimant has been diagnosed with heart disease specifically related to his high blood pressure leading to a transient ischemic attack;

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

Both physicians have testified that there was no indication of heart disease or hypertension shown of the Claimant's pre-employment physical;

D. That the covered condition resulted in temporary, partial, or permanent disability or death.

The Claimant was temporarily disabled while in the hospital, beginning on March 8, 2207, while his condition was diagnosed and while he underwent surgery. Following his release from the hospital, the Claimant was not cleared for work until April 24, 2007. For some unknown reason, the Claimant did not return to work until July 2, 2007, but even then, he was on a light duty work status for approximately 90 days.

31. Since the Claimant has met all of the elements above, the presumption applies and

the burden of proof shifts to the Employer/Carrier to overcome the presumption. I find that based on the evidence before me, the Employer/Carrier has not overcome the presumption. As stated above, the testimony of Dr. Pierpont does not rebut the presumption. I find that the Employer/Carrier is responsible for authorizing a board certified cardiologist to treat the Claimant for so long as reasonable and medically necessary and causally related to the industrial accident.

32. The Employer/Carrier has asserted that the Claimant did not give timely notice of the industrial accident. It is clear that the Claimant was never informed by his Employer that he may be entitled to Workers Compensation benefits as a result of his cardiovascular disease, hypertension, or the TIA resulting in his hospitalization in March 2007. The Claimant's Supervisor was notified of the Claimant's condition and the Claimant requested leave for four months to recover from the TIA and surgery. The Claimant took his return-to-work-slips to the Employer, who made accommodations for the Claimant's light duty work upon his initial release to work. I accept the Claimant's uncontroverted testimony that he gave the Employer notice in August within days of learning of his potential entitlement of same from a co-worker. Since the Employer failed to inform the Claimant of his potential entitlement to benefits, I find that they have waived any argument they may have to the untimely reporting of the accident.

Alternatively, I find that the Employer had actual knowledge of the Claimant's injury pursuant to Florida Statutes Section 440.185(1)(a)(2007).

33. The Claimant has requested payment of incurred medical expenses. At the Final Hearing the Claimant introduced a composite of the medical expenses incurred and testified as to the amounts and the physician, etc. I find that the medical expenses are the responsibility of the

Employer/Carrier. The parties have agreed to attempt to resolve the payment of the medical expenses administratively if the claim is found to be compensable. Jurisdiction is reserved on the amounts if the parties are unable to agree.

34. Although the Claimant was cleared for work by Dr. Augustine on April 24, 2007, the Claimant testified that he was out of work from March 2007 through July 2007 and he received full sick pay at the same rate as his salary. The Claimant also received short-term disability benefits during the period he was in the hospital provided by the Employer. The Claimant returned to work with the Employer on July 3, 2007, and testified that he has been working full-time ever since and that he has no physical problems or restrictions related to his condition.

36. The Claimant has made a claim for temporary total disability benefits from March 8, 2007, to July 2, 2007. The only medical testimony on this issue is from Dr. Mathias who testified that he would have only kept the Claimant off work for one month based on his TIA. Additionally, Dr. Mathias testified that the Claimant would have been at maximum medical improvement on May 12, 2007. When he was released to return to work in April, he did not do so, and did not return until July 3, 2007. The Claimant's testimony is that while he was off work, he received his full wages. I find that the Claimant would have been on a temporary total disability status, at most, for one month as testified to by Dr. Mathias. As such, I find that the Claimant is entitled to temporary total disability benefits from March 8, 2007 to April 7, 2007. Since the Employer paid the Claimant his full wages during that time, they are entitled to recoup the wages from the Claimant. The Claimant is entitled to penalties and interest on the unpaid compensation benefits.

37. I accept the testimony of Dr. Mathias that the Claimant attained maximum medical

improvement on May 12, 2007.

38. The Claimant has asserted that he should be entitled to a Class 4 impairment rating for his hypertensive cardiovascular disease of 60% and 20% for his coronary artery disease pursuant to the testimony of Dr. Mathias. A review of the Florida Uniform Permanent Impairment Rating Schedule, as supported by the testimony of Dr. Pierpont, is that if the Claimant did not repeatedly have diastolic pressure readings in excess of 90 mm Hg, he would not qualify for any permanent impairment rating. Dr. Pierpont testified that he didn't agree with the rating schedule, given the fact that the Claimant had coronary heart disease, had a TIA, and had left carotid endarterectomy, but that pursuant to the schedule, the Claimant did not qualify for a rating since his diastolic pressure readings were not in excess of 90 mm Hg. As such, I find that the Claimant has attained maximum medical improvement, but does not have a permanent impairment rating as a result of his compensable conditions. The claim for payment of impairment benefits is hereby denied and dismissed.

39. 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.

40. 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 suffered a compensable industrial accident arising out of and in the course of his employment on March 8, 2007.

2. The Employer/Carrier shall authorize a board certified cardiologist to treat the Claimant's compensable conditions for so long as reasonable and medically necessary and causally related to the industrial accident.

3. The Employer/Carrier shall pay to the Claimant temporary total disability benefits for the period of March 8, 2007 through April 7, 2007. The Employer is entitled to recoup the wages paid to the Claimant during this period.

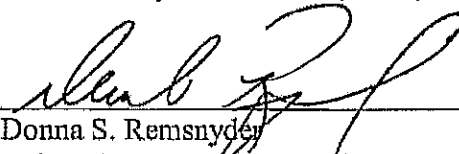
4. The Claimant reached maximum medical improvement on May 12, 2007, with a zero percent permanent impairment rating so the Claim for impairment benefits is denied and dismissed.

5. The medical expenses introduced at the hearing are the responsibility of the Employer/Carrier. Jurisdiction is reserved on the exact amounts if the parties are unable to agree.

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

7. 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 20th day of November, 2008, in St. Petersburg, Pinellas County, Florida.



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Reason: digitally signed and e-mailed
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District Deputy Clerk