

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

ROBERT PUNSKY,

Appellant,

v.

CASE NO. 1D07-3901

CLAY COUNTY SHERIFF'S OFFICE
and SCIBAL INSURANCE GROUP,

Appellees.

FILED
08 JUL 22 AM 11:15
DIVISION OF
ADMINISTRATIVE
HEARINGS

Opinion filed July 21, 2008.

An appeal from an order of the Judge of Compensation Claims.
Ivy C. Harris, Judge.

Todd J. Sanders of Bichler & Kelley, P.A., Winter Park, for Appellant.

Allison Hunnicutt Hauser of Marks Gray, P.A., Jacksonville, for Appellees.

BROWNING, C.J.

Appellant/Claimant seeks review of an order from the Judge of Compensation Claims (JCC) denying workers' compensation benefits. We reverse for the reasons

below.

On June 24, 2005, Claimant, who was employed as a deputy sheriff, had a heart attack while sleeping. Following the denial of his workers' compensation claim by the employer/carrier (E/C), Claimant petitioned for benefits based on allegations that the stress from his job as a police officer had caused the heart attack. In his petition, Claimant sought to invoke section 112.18, Florida Statutes, commonly referred to as the "firefighter's presumption," to the effect that law enforcement officers who have heart attacks with no apparent non-occupational cause are entitled to workers' compensation benefits.

To receive the benefit of the firefighter's presumption, (1) a claimant must show that the presumption applies and (2) the E/C must fail to rebut or overcome the presumption. The JCC ruled both that the presumption did not apply because Claimant failed his pre-employment physical, and that, even had it applied, the E/C rebutted it by presenting evidence of a pre-existing condition and other risk factors. To the contrary, we hold the presumption does apply and was not overcome by the E/C.

The presumption applies in this case because Claimant meets all of the requirements of the statute. The E/C contests only one requirement, arguing that claimant had not successfully passed a preemployment physical. However, all three

doctors testifying at the hearing agreed the physical as given showed no evidence of heart disease, and the doctor who administered the exam concluded at that time that Claimant had passed. Upon establishing the presumption applies, Claimant met his burden, and the burden switched to the E/C to overcome the presumption.

The E/C did not meet their burden in rebutting the presumption because they did not provide evidence of a specific non-occupational cause of Claimant's heart disease. See Caldwell v. Div. of Ret., Fla. Dep't of Admin., 372 So. 2d 438 (Fla. 1979). Testimony given by the E/C's experts that Claimant would have had a heart attack no matter what job he was employed in shows only that the doctors believed the heart attack, and, by inference, the heart disease which caused it, were not caused by the job, not that there was another specific cause identified. Such testimony does not rebut the presumption.

While the E/C's experts did give various opinions as to the risk factors apparent from Claimant's medical history, one of which was his pre-existing condition, risk factors do not amount to causation. The E/C's own expert, Dr. Nocero, testified to the difference between the two concepts. Thus, City of Temple Terrace v. Bailey, 481 So. 2d 49 (Fla. 1st DCA 1985), wherein this Court held that benefits were properly denied where Claimant's disability was the "natural progression" of, or was "caused" by, a congenital heart disease, is distinguishable on

its facts. As the E/C failed to present evidence of a specific cause of Claimant's heart disease, the presumption has not been overcome and thus Claimant is entitled to relief. See Caldwell, 372 So. 2d at 441.

REVERSED and REMANDED for further proceedings.

KAHN and THOMAS, JJ., CONCUR.