

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

|   |   |                            |
|---|---|----------------------------|
| Michael A. Waldman,                     | ) |                            |
| Employee/Claimant,                      | ) |                            |
|   | ) |                            |
| vs.                                     | ) |                            |
|   | ) | OJCC Case No. 06-027171JEM |
| Hillsborough County Sheriff's Office,   | ) |                            |
| Employer, and                           | ) | Accident date: 6/5/2006    |
|   | ) |                            |
| Unisource Administrators,               | ) |                            |
| Carrier/Serviceing Agent.               | ) |                            |
|   | ) |                            |
| -----                                   | ) |                            |
| Steven Pyle, Esq., Attorney for the     | ) |                            |
| Claimant                                | ) |                            |
| L. Gray Sanders, Esq., Attorney for the | ) |                            |
| Employer/Carrier                        | ) |                            |

**ORDER ADDRESSING THE MERITS OF A PETITION FOR BENEFITS FILED ON  
SEPTEMBER 15, 2006**

After due notice to the parties, a hearing on this claim was held in Tampa, Hillsborough County, Florida. The Parties were represented by Counsel as indicated hereinabove.

**Claim was made for the following:**

1. Determination of the compensability of claimant's hypertension and heart disease.
2. Authorization for medical care under the supervision of a board certified cardiologist or other qualified physician for the care and treatment of claimant's hypertension and heart disease.

3. A reasonable attorney fee for the attorney for the Claimant.
4. The cost of these proceedings.

**The claim was defended on the following grounds:**

1. Claimant did not sustain an injury by accident arising out of and within the course and scope of his employment.
2. Claimant's condition is not compensable.
3. The presumption afforded by section 112.18 F.S. does not apply.
4. Authorization of a cardiologist is not medically necessary.
5. Claimant's work is not the major contributing cause of any accident, injury, or contributing need for treatment.
6. Claimant failed to undergo a pre-employment physical.
7. Benefits, if due, are only payable during the period of temporary exacerbation of the claimant's condition.
8. The employer/carrier denies any liability to the claimant for the payment of costs or attorney's fees.

**The parties entered into the following stipulations:**

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

2. Venue properly lies in Hillsborough County, Florida.
3. Notice of hearing and notice of injury were properly given as required by the Workers' Compensation Law.
4. On 6/5/06 the Claimant was employed by the Employer herein.
5. No disability compensation or medical benefits have been furnished to the Employee by the Employer/Carrier.
6. Medical reports were agreed to be admissible into evidence.

At the trial of this cause, the following documents were admitted into evidence:

**Judge's Exhibits:**

1. Petition for Benefits filed 9/15/06.
2. Pretrial Stipulations; Pretrial Compliance Questionnaire, and Order.
3. Employer/Servicing Agent's Amendment to Pretrial Stipulation.
4. Claimant's Trial memorandum.
5. Employer/Servicing Agent's Trial Memorandum.

**Claimant's Exhibits:**

1. Transcript of the deposition testimony of Patrick Mathias, M.D.

**Employer/Carrier Exhibits:**

1. Transcript of the deposition testimony of Joseph Massaro, D.O. taken 3/20/08.
2. Transcript of the deposition testimony of Michael Waldman taken 10/23/06.
3. Transcript of the deposition testimony of Michael Waldman taken 1/29/08.
4. Transcript of the deposition testimony of Nancy Weller taken 3/12/07.
5. Transcript of the deposition testimony of Billie Lou Bacon taken 9/12/07.
6. Medical Composite.

After due consideration of this matter and after having the opportunity to review the documentary matters and having had the opportunity to observe the candor and demeanor of the witnesses who did appear and give live testimony before me, and having endeavored to resolve all conflicts of fact in the evidence presented herein, I do make the following findings of fact:

1. I have jurisdiction of the facts and the subject matter of this claim.
2. The stipulations as entered into by and between the parties are hereby adopted as findings of fact and incorporated herein by reference.
3. The claimant is a 51-year-old male. He was hired by the Hillsborough County Sheriff's Office on July 7, 1986 and has worked as a detention deputy since that time. The claimant has been diagnosed by his cardiologist, Patrick Mathias, M.D., as suffering from essential hypertension, obesity, inflammatory bowel disease, diabetes, microalbuminuria, diplipедemia, orthopedic problems, and concentric left ventricular hypertrophy (LVH). The cardiologist relied upon by the

employer/carrier evaluated the claimant and concluded that claimant suffered from hypertension, hyperlipodemia, diabetes mellitus, and metabolic syndrome. The issues presented is whether the claimant suffers from hypertension and/or heart disease and, if so, whether these conditions are compensable under the workers' compensation laws of the State of Florida.

4. It is clear that the claimant has hypertension, which is a diagnosis upon which both of the medical experts agree. As noted, claimant's medical expert was of the opinion that the claimant also had LVH, which he described as a condition where the heart muscle is thickened as a reaction to the claimant's hypertension. Dr. Mathias based this diagnosis on an echocardiogram performed 6/7/06. The records of Brandon Regional Medical Center include the echocardiogram report of 6/7/06 and it clearly states the radiologist's finding that there was evidence of "moderate concentric left ventricular hypertrophy". This condition, Dr. Mathias testified, would be classified as heart disease. Dr. Massaro simply testified that the claimant did not have heart disease. However, Dr. Massaro was neither asked about the LVH or any opinion he may have had regarding that condition. While the employer/carrier point to this as evidence of a dispute between the physicians as to whether or not the claimant has heart disease, the undisputed fact is that the claimant does have LVH. According to *Dorland's Illustrated Medical Dictionary* and the *Merck Manual, Eighteenth Edition*, LVH is a serious complication of hypertension. As stated in the *Merck Manual*, at page 606, "because of increased afterload, the left ventricle gradually hypertrophies, causing diastolic dysfunction. The ventricle eventually dilates, causing dilated cardiomyopathy and heart failure (HF) due to systolic dysfunction." It is found, therefore, that the question of whether the claimant has LVH

is not in dispute and the opinion of Dr. Mathias that this condition is a heart disease is accepted. (Heart disease: "any organic, mechanical, or functional abnormality of the heart, its structures, or the coronary arteries." *Dorland's Illustrated Medical Dictionary*, page 482.)

5. The question that now arises is whether the claimant suffers from a compensable occupational disease. As the Court, *en banc*, said in City of Port Orange v. Sedeca, 953 So.2d 727, 733 (Fla. 1 DCA 2007) "disability not disease determines compensability". They also said that "no loss of earnings means no disability. No disability means no occupational disease."

6. Claimant invokes the provisions of sec 112.18 F.S., claiming entitlement to the benefit of the presumption afforded to firefighters, law enforcement and correctional officers. This statute provides that employees within the three classes who have successfully passed a pre-employment physical examination, which examination failed to reveal any evidence of tuberculosis, heart disease or hypertension and who later contract one of the named conditions, the condition is presumed to "have been [by] accident and to have been suffered in the line of duty **unless the contrary be shown by competent evidence.**" (Emphasis added.)

7. In order to secure benefits under the Act claimant must establish a) that he is a corrections officer, which is a given; b) that he has one or more of the three listed conditions, of which no evidence was revealed on the pre-employment physical, which he does; c) that there has been disablement as a result of the occupational disease. Sec. 440.151(1)(a) F.S.

8. Section 440.151(3) F.S. states "Except, as otherwise provided in this section, "disablement" means disability as described in s. 440.02(13)." The referenced sections defines

disability as "... incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury." The Court in their decision in City of Port Orange, supra at 731, stated "Thus, the statute requires a claimant actually be incapable of performing his work. Until "'actually incapacitated'", **at least partially**, no coverage for a disease or medical condition is available under the Act, because a claimant's disease or medical condition has not resulted in a disablement as the statute defines that term." (Emphasis added.)

9. The employer/carrier argues that the claimant failed to undergo a pre-employment physical. The only evidence on this point is the claimant's testimony. He testified that he did have a pre-employment physical, which, he said, he obviously passed because he was hired. He testified that at the time of his hire he had no health issues and started at the academy two weeks after taking the physical. Claimant testified that he had never been diagnosed with hypertension prior to approximately six years ago. The only evidence offered by the employer/carrier on this point was provided by Nancy Weller who works for the risk management bureau of the Hillsborough County Sheriff's Office. Ms. Wilson obviously had very limited information with her at the time of her deposition; she could not state when the claimant was hired; she had no medical records in his file; she noted that her file material did not contain any type of pre-employment physical. The only person who stated the claimant had not taken a pre-employment physical was Billie Sue Bacon, the workers' compensation carrier's adjuster and she was merely stating her understanding from speaking with the employer. The testimony of Ms. Bacon on this point can hardly be considered as competent or substantial. The employer has offered no evidence that pre-employment physicals were not a

requirement at the time claimant was hired nor have they offered competent evidence to rebut claimant's testimony that he had undergone such an examination prior to beginning his employment with the sheriff's office.

10. As has already been found, the claimant does have hypertension and heart disease.

11. The record evidence establishes that on June 5, 2006 the claimant developed symptoms at work that caused the facility nurse to take his blood pressure. Claimant's blood pressure was found to be 225/120. He was taken by a co-employee, at the employer's direction, to Brandon Regional Medical Center where he was admitted for evaluation and diagnostic testing. The claimant was in the hospital for two days. He testified that he returned to work the following Monday, June 11, 2006. He said that as a result of this incident he missed at least two or three scheduled work days. It would appear from the employer's "Time Detail" that but for claimant's available sick leave and vacation time he would have experienced a loss of wages specifically attributable to this accident. Section 440.12(1) F.S. states "No compensation shall be allowed for the first seven days of disability, except benefits provided for in s. 440.13 [medical benefits].." It is clear, therefore, that an injured worker's disability can be for a period less than seven days, and if it is, the only caveat is that there are no benefits payable for lost wages; medical benefits are available, however.

12. Considering the foregoing, it is found that the claimant has met his burden of proof and established a *prima facie* case to support a finding that he has a compensable occupational disease. It is to be presumed that the claimant's hypertension and heart disease are accidental and were suffered "in the line of duty unless the contrary be shown by competent evidence." Sec. 112.18(1) F.S.



Claimant argues that the presumption may only be overcome by clear and convincing evidence and in support of that proposition refers the court to Caldwell v. Division of Retirement, 372 So.2d 438 (Fla. 1979). In that case the Florida Supreme Court noted at page 441 that "This statutory presumption can be rebutted by showing some other specific hazard or non-occupational factor was the cause of the disease... [and that]... it is necessary that the Commission show that the disease was caused by a specific non-work related event or exposure." The court went on to say "[w]here the evidence is conflicting, the quantum of proof is balanced and the presumption should prevail." It is only when there is evidence supporting the presumption, and a claimant is not relying solely on the presumption, however, that the employer/carrier are required to overcome the presumption by clear and convincing evidence. Caldwell, p.441; Lintini v. City of West Palm Beach, 33 Fla. L. Weekly D1240 (Fla. 1DCA 2008); Seminole County Sheriff's Office v. Johnson, 901 So.2d 342 (Fla. 1DCA 2005).

13. The employer/carrier's medical expert, Dr. Massaro, noted that the claimant had a history of high blood pressure, diabetes, and high cholesterol and that, considering the claimant's weight, he concluded the claimant had a metabolic syndrome. He stated that the presence of diabetes didn't necessarily put the claimant at risk for hypertension but was of the opinion that if you had both diabetes and were overweight a person would be at greater risk of developing hypertension. However, Dr. Massaro agreed that the claimant had essential hypertension and that the cause of essential hypertension was unknown. He was of the opinion that the claimant's hospitalization and evaluation was reasonable and medically necessary. Similarly, the claimant's medical expert, Dr.

Mathias, opined that the claimant suffered from essential hypertension and also held the opinion that the cause of essential hypertension was unknown. He noted that the claimant did not have "secondary" hypertension, a condition for which the cause would be known and to which the hypertension would be considered secondary. Neither physician was able to point to a specific cause for the claimant's hypertension and heart disease.

14. Considering the foregoing it is found that the employer/carrier has failed to establish that the claimant's heart disease and hypertension were caused by a specific non-work related event or exposure. Hence, the presumption should prevail. Caldwell, at p. 441 supra. It is found that claimant does suffer from compensable heart disease (LVH) and hypertension and is entitled to be provided with appropriate medical care and treatment under the supervision of a board certified cardiologist.

15. I find that Counsel for the Claimant has performed a valuable service and is entitled to a reasonable fee at the expense of the employer/carrier. Jurisdiction is reserved to determine the quantum of the fee in a subsequent proceeding, in the event the parties cannot so agree.

**IT IS, THEREFORE, ORDERED** that the Employer/Carrier do:

1. Authorize medical care under the supervision of a board certified cardiologist for the care and treatment of claimant's hypertension and heart disease.
2. Pay the reasonable taxable costs of these proceedings.
3. Pay to counsel for the claimant a reasonable attorney's fee.

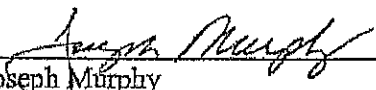
4. Jurisdiction is reserved to determine the quantum of attorney's fees and costs in the event the parties cannot so agree.

The parties are herewith notified that the court file relating to the instant claim will be destroyed six (6) months from the date this order becomes final, if not appealed, or six (6) months after the date of mandate or other order of final disposition if appeal is taken

A party desirous of retaining any portion of the closed file must so notify this office not less than 30 days prior to the destruction date.

**DONE AND ORDERED** in chambers in Tampa, Hillsborough County, Florida.



  
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THIS IS TO CERTIFY that the foregoing Rec'd Order was entered and that a copy was sent by U.S. Mail this 19<sup>th</sup> day of May 2008 to each of the following:

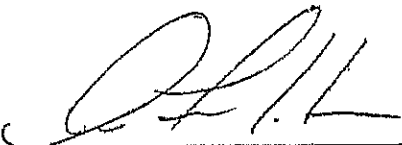
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