

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
DISTRICT ORLANDO

EMPLOYEE:

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ATTORNEY FOR EMPLOYEE:

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EMPLOYER:

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CARRIER/SERVICING AGENT:**

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CARRIER/SERVICING AGENT:

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OJCC NO.: 08-010224TWS
D/A: 06/25/2006
Judge: Thomas W. Sculco

COMPENSATION ORDER

Pursuant to due Notice of Hearing, this matter came on for Hearing in Orlando, Orange County, Florida on April 14, 2009. Present and representing the employee was Paul A. Kelley, Esquire. Present and representing the carrier/servicing agent were James R. Spears, Esquire and John D. W. Beamer, Esquire.

Prior to hearing, the parties entered into a pretrial stipulation which is accepted and adopted by the undersigned. The Petitions for Benefits listed on the pretrial stipulation was; 04/16/2008.

The following were admitted as documentary evidence:

- #1. Claimant's: Trial Memorandum
- #2. E/C/SA's: Trial Memorandum
- #3. Joint: Deposition of Richard Leita
October 17, 2008
- #4. Joint: Deposition of Eric Baumgardner
October 30, 2008
- #5. Judge's: Pretrial Stipulation
August 12, 2008
- #6. E/C/SA's: Amendment to Pre-Trial Stipulation
March 16, 2009
- #7. Joint: Joint Stipulation as To Certain Facts
April 7, 2009

After hearing all of the testimony and evidence presented, and after having resolved any and all conflicts therein, and after having very carefully observed the candor and demeanor of the witnesses who testified before me, the undersigned Judge of Compensation Claims makes the following findings of fact and conclusions of law:

The issues for determination are claimant's claims for additional permanent impairment ("PIB") benefits pursuant to Section 440.15(3)(c), Fla. Stat. (2006); penalties; interest; costs; and attorneys' fees. The parties have agreed that claimant's entitlement to additional PIB benefits turns on whether the statute provides for a 50% reduction in benefits for weeks where the claimant has earned less than his AWW, but where the reason for the reduced earnings is unrelated to the compensable injury. The parties further agreed that if I determine that claimant is entitled

to additional PIB benefits, that the exact amounts owed will be handled administratively.

ANALYSIS AND CONCLUSIONS

Claimant is a firefighter with Seminole County who suffered a compensable heart attack on 6/25/06. He was treated by Dr. Sunil Kakkar, who placed claimant at maximum medical improvement ("MMI") on 9/27/06 with a 20% permanent impairment rating. This rating entitled claimant to 55 weeks of PIB benefits. Claimant returned to work, and during some of these weeks, earned less than his average weekly wage ("AWW"). The parties have stipulated that the reasons claimant earned less than his AWW during this period are unrelated to his compensable injury.

The dispute in this case centers around the proper interpretation of Section 440.15(3)(c), Fla. Stat. (2006), which provides:

Impairment income benefits are paid biweekly at the rate of 75 percent of the employee's average weekly temporary total disability benefit...; provided, however, that such benefits shall be reduced by 50 percent for each week in which the employee has earned income equal to or in excess of the employee's average weekly wage.

I find the language of the statute is clear and unambiguous. The carrier is to pay benefits biweekly at the 75% of TTD rate. If for any week the claimant earns more than his AWW, the statute permits a 50% reduction of those benefits. The statute does not contain the language 'could have earned' or 'is able to earn' as is found in other partial disability provisions of the statute.

I have also considered cases where the courts have distinguished 'permanent impairment' from 'disability'. The legislature is presumed to

know existing law when it enacts new statutory provisions. The legislature did not redefine the term permanent impairment to equate to disability in the 2003 amendments. The First District Court of Appeal in Manatee Memorial Hospital v. SDTF, 774 So. 2d 876 (Fla. 1st DCA 2000) specifically stated, "impairment income is payable irrespective of disability". I find nothing in the current statute which suggests the legislature intended to abrogate the court's ruling in Manatee.

I have considered the E/SA's argument that the unintended consequences of applying the statute as clearly worded may result in a claimant intentionally or fraudulently losing time in order to obtain greater benefits. The statute, however, already provides employers a remedy for that situation. Section 440.15(6), Fla. Stat. (2006) specifically allows the employer/carrier to deny compensation benefits if the claimant refuses suitable work without justification. The E/SA presented no argument or evidence in this case, though, suggesting that claimant should be denied compensation pursuant to Section 440.15(6).

I find that the statute as clearly worded does not result in an absurd result requiring the court to look beyond the clear and unambiguous language of the statute. It is reasonable that the legislature desired to maintain a simple determination of benefits based strictly on the mathematical application of easily determined amounts. Furthermore, it is also reasonable that the allowance for the 50% reduction of benefits was a legislative attempt to avoid worker destitution by providing an incentive and a means of encouraging employers to provide work for injured workers beyond the date of maximum improvement. Moreover, the interpretation of the statute suggested by the E/SA could just as easily result in abuses by

an employer. For example, an employer might decide to "lay off" an injured worker allegedly for economic reasons in order to avoid paying higher PIB benefits.

WHEREFORE, it is Ordered and Adjudged:

1. The E/C is ordered to pay claimant additional permanent impairment ("PIB") benefits pursuant to Section 440.15(3)(c), Fla. Stat. (2006), plus penalties and interest. Per the agreement of the parties, the exact amounts of benefits owed will be handled administratively.
2. Claimant is entitled to reasonable attorneys' fees and costs from the E/SA for securing the above benefits. Jurisdiction is reserved to determine the amount of fees and costs owed.

Done and Ordered this 11th day of May, 2009.

Thomas W Sculco
Judge of Compensation Claims
Orlando District

This is to certify that the above Order was entered by the Judge of Compensation Claims and a copy were served by email to Paul A. Kelley, Esquire, James R. Spears, Esquire and by U.S. Mail to The parties.

Assistant to Judge Sculco

