

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

Robert Jefferson,
Employee/Claimant,

OJCC Case No. 16-004543WRH

vs.

Accident date: 1/13/2007

State of Florida Department of
Corrections/Division of Risk Management,
Employer/Carrier/Service Agent.

Judge: William R. Holley

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FINAL MERITS HEARING ORDER

THIS CAUSE came on for final merits hearing before the undersigned Judge of Compensation Claims on January 13, 2017. The Claimant, Robert Jefferson, was present and was represented by Amie DeGuzman, Esquire and John Rahaim, Esquire. The employer, State of Florida Department of Corrections, and the carrier/servicing agent, Division of Risk Management, were represented by Greg Lower, Esquire. For purposes of this order, the employee will be referred to as "Employee" or "Claimant." The employer/carrier/servicing agent will be referred to as "Employer" or "Carrier" or "Employer/Carrier."

This Final Order resolves the petition for benefits e-filed February 24, 2016. All evidence was received and the record was closed on January 13, 2017.

I. ISSUES:

The Claimant sought the following benefits:

1. Compensability of Claimant's heart condition under §112.18
2. Authorization of and an appointment with heart specialist, Joel Schrank
3. Permanent Impairment benefits starting date August 29, 2007 to present and continuing.
4. Penalties, Interest

5. Costs, attorney's fees

II. EMPLOYER/CARRIER'S DEFENSES

The Employer/Carrier defended on the following grounds:

1. The Claimant did not suffer an accident in the course and scope of employment.
2. The Claimant did not suffer from an occupational disease in the course and scope of employment.
3. The Employer/Carrier has successfully rebutted the presumption of Claimant's arrhythmia with competent substantial evidence of nonoccupational causes of Claimant's arrhythmia.
4. The Statute of Limitations has run on claim. [440.185]
5. Untimely notice of accident/injury. [440.19]
6. No penalties, interest, costs or attorney's fees due and owing.

III. STIPULATIONS

The parties have stipulated to the following:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.
2. Proper venue is Union County, with the trial to be held in Jacksonville, Duval County, Florida.
3. There was an employee/employer relationship on the date of accident sufficient for this employee to be covered pursuant to Chapter 440 of the Florida Statutes.
4. Notice of the accident/injury is in dispute and was not accepted as compensable. There was timely notice of the pre-trial conference and the trial.
5. Workers' compensation insurance was in effect on the date of accident.
6. If medical benefits are determined to be due or stipulated due herein, the parties

agree that the exact amounts payable to health care providers will be handled administratively and medical bills need not be placed into evidence at trial.

If compensable, the issues of average weekly wage and compensation rate, amount of permanent impairment benefits, penalties, and interest will be handled administratively.

7. This case is not governed by a managed care arrangement.
8. The following doctors or medical providers are authorized doctors: None.
9. The following body parts are in dispute: heart disease
10. The petition for benefits and the response to that petition were filed as set forth in the Judge's Exhibits noted herein.
11. The Employer/Carrier concedes that the Claimant is a member of a covered class as he was a Corrections' Officer on the alleged date of accident. The Employer/Carrier concedes that the Claimant suffers from the covered condition of arrhythmia. The Employer/Carrier concedes that the Claimant suffered a disability as a result of the arrhythmia and pacemaker installation. The Employer/Carrier concedes that the Claimant underwent a pre-employment physical examination that showed no evidence of hypertension or heart disease. The E/C however is asserting that the Reverse Presumption applies.
14. The parties agree that the alleged date of accident is 1/13/2007.

IV. WITNESSES AT TRIAL

The following Witnesses testified live:

1. Claimant.
2. Sheryl Kidd (telephonic), claims representatives for State of Florida Division of Risk Management.

V. DOCUMENTARY EVIDENCE

The following documents were offered into evidence:

Judge's Exhibits:

1. Petition for benefits e-filed February 24, 2016. [D. 1]
2. Response to petition for benefits e-filed March 23, 2016. [D. 8]
3. Uniform Statewide Pretrial Stipulation e-filed July 13, 2017. [D. 23]
4. Pretrial Order entered July 13, 2016. [D. 24]
5. Claimant's Trial Statement or Brief (for argument only) e-filed January 11, 2017. [D. 33]
6. Employer/Carrier's Trial Statement or Brief (for argument only) e-filed January 11, 2017. [D. 34].

Claimant's Exhibits:

1. Deposition of Dr. Patrick F. Mathias, M.D. taken on November 30, 2016 e-filed December 16, 2016. [D. 30].
2. Pre-Employment Physical e-filed 1-12-2017. [D. 37]

Employer/Carrier's Exhibits:

1. Response to Petition for Benefits dated March 23, 2016. [D. 8]
2. First Report of Injury for May 8, 1995 date of accident e-filed January 12, 2017. [D. 35]
3. First Report of Injury for January 13, 2007 Date of Accident received February 29, 2016. [D. 38]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In making the findings of fact and the conclusions of law in this claim, the undersigned Judge of Compensation Claims (hereinafter "JCC" or "undersigned") has carefully considered and weighed all the evidence presented. The undersigned has observed the candor and demeanor of the witnesses and has attempted to resolve all conflicts in the testimony and evidence presented. Although the undersigned may not have referenced every piece of evidence presented by the parties, the undersigned has fully considered all the factual evidence in arriving at the following conclusions of law.

1. The undersigned JCC has jurisdiction of the subject matter and the parties of this claim. The stipulations of the parties are adopted and shall become part of the findings of facts herein. The documentary exhibits offered by the parties are admitted into evidence and shall become a part of the record herein.

2. The Claimant is a 65 year old correctional officer who worked for the Department of Corrections since 1977 until he retired in 2008. His duties included care and custody of inmates. He physically was required to restrain inmates, break up fights, chase down inmates. He described it as being physically tough. He also was required to undergo annual training.

In 2006, he started feeling dizzy, weak and had irregular heartbeats which was confirmed by a physical. Sometimes the Claimant was at work when this happened. The Claimant informed his supervisor in 2006 about the above symptoms and that he thought it was work related. The Claimant credibly testified that he did not request to file this condition as a workers' compensation claim because he did not know the law at that time.

In 2007, the Claimant was also working part time at Cracker Barrel as a backup cook. While working there one day, he felt weak and dizzy and ended up going to the hospital straight from the restaurant. He had to undergo an ablation, and on January 13, 2007, had a pace maker implanted at a hospital in Jacksonville. He informed his supervisor, Harry Bruner, by phone that he was having the above heart procedure and would be out of work a few weeks recovering from the procedure.

The Employer's insurance carrier did not contact the Claimant after this hospital stay. He was required to bring in a doctor slip before returning to work which he did when he handed it to Harry Bruner. He never received an information packet as to his rights under workers compensation in the mail. He did not see anything posted anywhere at the office or the building where he worked about workers' compensation. Claimant was a member of the union but did not receive any information about the heart bill.

The Claimant did not return back to work at Cracker Barrel after this hospital stay. The Claimant stated that he is better since the pace maker was installed but that he still has problems even today.

The Claimant first heard about his condition being covered under workers compensation in 2016 through a friend/co-worker Morton Crocket that had spoken with another co-worker Clay Griffis about his heart issues. Following this conversation, the Claimant contacted Gray Griffis directly about his heart issue and that same month contacted his current attorney, Mr. Rahaim who promptly filed a Petition for Benefits.

3. The Claimant had a previous workers compensation claim which was filed on May 8, 1995, where the Claimant had a laceration to right leg cut by window. It was closed by the adjuster at that time on May 25, 1995. There were no notes in the file but there was record of medical bills being paid in June and July 1995 at Bradford Hospital. The Claimant acknowledged that he had a scratch on his leg after being told to file the claim. He acknowledged receipt of medical care from Bradford Hospital that took place in one day. The Claimant did not remember getting anything from claims or the employer about that date of accident.

4. The claims department did not receive notice of the instant claim until they received the PFB e-filed February 24, 2016. The date of loss was listed as January 13, 2007. The injury was listed as "heart/htn" and requested the following benefits: "permanent impairment or wage loss starting August 29, 2007 to present and continuing; authorization of medical care/testing with heart specialist, Dr. Joel Schrank as his workers' compensation doctor; compensability; attorney fees, penalties, interest and costs." The first report of injury was received by the Carrier on February 29, 2016 after the PFB had already been received. The description of the injury/illness indicated therein indicated that the Claimant had been having irregular heart beat, light headedness, dizziness and was passing out. It also indicated that the Claimant thought that this condition was happening at work and home.

On March 23, 2016, the Response to the PFB was filed and listed the following defenses: (1) E/C denies request for Permanent Impairment Benefits as the claimant failed to provide timely notice of alleged 01/13/2007 accident, did not request or seek indemnity benefits for almost 10 years after alleged accident, there was no apparent accident by injury arising out of

and in the scope of employment/no disabling event and the claimant has been controverted in its entirety; 2) E/C denies request for authorization for care and treatment by a cardiologist, namely Dr. Joel Schrank, as the claimant failed to provide timely notice of alleged 01/13/2007 accident, did not request or seek medical treatment through E/C for almost 10 years after alleged accident, there was no apparent accident by injury arising out of and in the scope of employment/no disabling event and the claimant has been controverted in its entirety.; 3) Claim is barred by the Statute of Limitations.; 4) No PICA due or owing.; 5) E/C retains the right to amend defenses and controvert above on any further or future grounds which may be, or may become, available.

5. On behalf of the Claimant, Dr. Patrick Mathias performed an independent medical examination (“IME”) on the Claimant on October 6, 2016. Dr. Mathias placed the Claimant at MMI for both the carotid sinus syncope and carotid sinus syndrome on February 15, 2007 and assigned him an 31% rating for this condition. The Claimant was put in a class 3 because he continues to have symptoms of shortness of breath on exertion although not severe. As this symptom can manifest as tiredness, fatigue, shortness of breath, brief episodes of dizziness, the doctor placed him in the above class as required by the permanent impairment guides. The Claimant was placed at a 31 percent rating because his symptoms were not extreme and he is able to go about simple day to day activities without difficulty even with his symptoms and has a pacemaker. The doctor opined that this opinion was within a reasonable degree of medical certainty.

The deposition of Dr. Patrick Mathias was taken on November 30, 2016. Dr. Mathias testified that the Claimant suffers from a condition called Carotid Sinus Syndrome (“CSS”), which is a form of cardiac arrhythmia. According to Dr. Mathias, the carotid sinus is a group of nerve cells in the neck related to the carotid artery. The carotid artery comes off of the aorta that comes out from the heart. This artery has nerves that directly govern cardiac function. In some individuals, these nerve cells become sensitive and any pressure or movement in their vicinity can result in activation of the brain. That activation of the brain can cause the heart to stop beating. When the heart stops beating, there's no blood flow to the brain and the patient passes out. In order to diagnose this condition, the examiner has to perform a carotid massage. The examiner will place his or her fingers on the carotid artery and apply pressure. In individuals

with a carotid sinus syndrome, the pressure is enough to stimulate the nervous system and cause the heart to stop beating. Notwithstanding the above, the doctor defined this as heart disease. After having such a massage, the Claimant had his heart stop beating for three whole seconds. The doctor was unable to explain what causes the condition to develop. He advised that it is simply not known why some individuals get it and other do not. When asked if Claimant's job had any relation, the doctor opined that he did not see any medical evidence that being a corrections officer can lead to carotid sinus syndrome.

6 The parties have stipulated that the Claimant meets the criteria for the legal presumption as established by F.S. 112.18. Thus the primary determination for the instant case is whether the Employer/Carrier is able to rebut the presumption such that his heart condition should not be presumed accidental and/or in the line of duty. The Employer/Carrier asserts that there is competent substantial evidence of a non-occupational cause of the arrhythmia. The burden of proof rests on the Employer/Carrier and requires medical evidence. Scherer v. Volusia County Dept. of Corrections, 171 So. 2d 135 (Fla. 1st DCA 2015); Fuller v. Okaloosa Corr. Inst., 22 So. 3d 803 (Fla. 1st DCA 2009)(requiring the employer to disprove occupational causation with medical evidence to rebut the presumption.)

Dr. Matthias' opinion is the only medical testimony. When reading his opinion within the context of his full deposition, the undersigned finds that the doctor was unable to provide an opinion as to the major contributing cause for the existence of Claimant's condition. In reviewing the doctor's statements carefully, the doctor indicated that he did not see any medical evidence that connected the Claimant's job to his condition. The undersigned interpreted this to mean that the doctor was not able to say that the job caused the condition via the medical evidence which does not conflate with a medical opinion that the job did not cause the condition. As the Employer/Carrier did not sufficiently satisfy their burden of proof to rebut the presumption, the claim is deemed compensable.

7. The Employer/Carrier also argued that the Claimant failed to provide timely notice of the accident/injury pursuant to § 440.185. The Employer/Carrier's first notice of the claim for the

alleged January 13, 2007 date of loss was the Petition for Benefits that was filed on February 24, 2016. The undersigned judge must respectfully reject this defense as the undisputed evidence demonstrates that the Claimant kept his supervisor aware in a timely manner as to his heart issues starting in 2006 and in 2007. The Claimant gave notice to his supervisor before/during his hospitalization and when he provided a medical note to him after he returned. The case law requires only that the Claimant to notify his supervisor as to the injury whether or not requesting or knowing to file a workers compensation claim or not. Therefore, this defense is not effective.

8. Additionally the Employer/Carrier contends that the statute of limitations pursuant to §440.19 would apply and bar the February 24, 2016 Petition for Benefits as the Claimant had been made aware of his rights including the statute of limitations. The facts do not indicate that he was aware of his rights under the statute of limitation. The Claimant also credibly testified that he was unaware of the heart bill and/or that his condition would have covered under workers compensation until he spoke with a former co-worker in 2016. From the evidence presented, the the Claimant did not his heart disease was covered by the heart bill until 2016. Therefore, the statute of limitations defense also is not effective and is respectfully rejected.

9. Accordingly, the claims for compensability of Claimant's Heart condition under §112.18; Authorization of and an appointment with heart specialist, Joel Schrank; Permanent Impairment benefits starting date August 29, 2007 to present and continuing and penalties and interest are hereby awarded. The only medical evidence via Dr. Matthias was that the Claimant had a PIR of 31% and MMI was assigned on February 15, 2007. No evidence to the contrary was presented. The attorneys agreed to administratively calculate the amount of said permanent impairment benefits, penalties and interest and the undersigned reserves jurisdiction in the event the parties are not able to reach an agreement.

10. The attorneys for the Claimant have performed a valuable service for their client and are entitled to attorney's fees and costs at the expense of the Employer/Carrier. Jurisdiction is reserved to determine the amount of attorney's fees and costs if the parties are unable to agree.

WHEREFORE, it is CONSIDERED, ORDERED and ADJUDGED as follows:

1. The claims for compensability, authorized medical care, permanent impairment benefits, penalties and interest are hereby GRANTED.
2. The attorneys agreed to administratively calculate the amount of said permanent impairment benefits, penalties and interest and the undersigned reserves jurisdiction in the event the parties are not able to reach an agreement.
3. The attorney for the Claimant has performed a valuable service for his/her client and is entitled to attorney's fees and costs at the expense of the Employer/Carrier. Jurisdiction is reserved to determine the amount of attorney's fees and costs if the parties are unable to agree.

DONE AND SERVED this 12th day of February, 2017, in Jacksonville, Duval County, Florida.



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