

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

Mark S. Aldridge,)	
Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 07-017247NSW, 07-017283NSW,
Escambia County Sheriff's Department, /Preferred)	07-017333NSW, 07-017379NSW
Governmental Claim Solutions,)	
Employer/ Carrier/ Servicing Agent.)	Accident date: 07-23-2006, 08-16-2002, 11/18/2006,
<hr/>)	05-15-2006

FINAL COMPENSATION ORDER

THIS CAUSE came on to be heard in Pensacola, Escambia County, Florida on 05-12-08 upon Claimant's claim for compensability of heart disease and hypertension pursuant to the heart/lung statute, penalties, interest, costs and attorney's fees. Four (4) Petitions for Benefits were filed 06-21-07 alleging four (4) dates of accident. Mediation was conducted on 09-12-07, eighty-three (83) days after the petitions were filed. The parties' pretrial compliance questionnaire was filed 09-26-07. The final hearing occurred three hundred twenty-six (326) days after the petitions were filed and this Order was entered thirty (30) days thereafter. Steven Pyle, Esq. was present in Pensacola on behalf of the Claimant. George Helm, Esq. was present in Pensacola on behalf of the Employer/Carrier (hereafter "E/C").

Submitted into evidence at the Final Hearing were the following documents, each accepted, identified and placed into evidence without objection except where noted, as Judge's Exhibits, Joint Exhibits, Claimant's Exhibits, or E/C Exhibits, as follows:

JUDGE'S EXHIBITS MARKED FOR THE RECORD:

- #1. The parties' pre-trial questionnaire filed 09-26-07.
- #2. E/C's Supplemental Pretrial Stipulation filed 12-13-07.
- #3. Petition for Benefits filed 06-21-07 (date of accident - 08-17-02).
- #4. Petition for Benefits filed 06-21-07 (date of accident - 05-16-06).
- #5. Response to Petition for Benefits filed 07-02-07.
- #6. Petition for Benefits filed 06-21-07 (date of accident - 07-23-06).
- #7. Response to Petition for Benefits filed 07-02-07.
- #8. Petition for Benefits filed 06-21-07 (date of accident 11-18-06).
- #9. Response to Petition for Benefits filed 07-02-07.

JOINT EXHIBITS:

- #1. Deposition of Dr. Rodney Powell taken 12-18-07.
- #2. Composite of Wage Statements.

CLAIMANT'S EXHIBITS:

None.

E/C's EXHIBITS:

- #1. Pre-employment physical dated 11-17-89.
- #2. Composite of Notices of Denial.
- #3. Deposition of Dr. Brent Duvic Videau taken 11-27-07. (Fact evidence only).

OBJECTIONS:

Claimant objected to the following proffered exhibit by the E/C:

- a. E/C Ex. #3 - Deposition of Dr. Brent Duvic Videau taken 11-27-07 as Dr. Videau was neither an authorized treating physician, IME or EMA. The E/C contends the deposition is admissible pursuant to Florida Distillers v. Rudd, 751 So.2d 754 (Fla. 1st DCA 2000). I find the instant case distinguishable from Rudd as there Claimant requested a physician and when the E/C failed to respond, Claimant obtained treatment, and thereafter at final hearing was allowed to offer such physicians deposition in evidence. Unlike Rudd, here it is the E/C, not Claimant, who is offering the physicians deposition into evidence. Despite refusing to authorize the physician as requested by Claimant and having now determined the opinions of such physician may be beneficial to its cause, the E/C contends the physician was an authorized provider and his opinions are therefore admissible. While I find a claimant under such circumstances may offer such opinion testimony, an E/C, by refusing authorization, has no such right. While Dr. Videau's testimony is admissible for factual purposes, Claimant's objection to admissibility of the opinion testimony of Dr. Videau is sustained.

In making the determinations set forth below, I have attempted to distill the salient facts together with the findings and conclusions necessary to resolve this claim. I have not attempted to painstakingly summarize the substance of the parties' arguments, nor the support given to my conclusions by the various documents submitted and accepted into evidence; nor have I attempted to state nonessential facts. Because I have not done so does not mean that I have failed to consider all of the evidence. In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all evidence submitted to me. I have considered arguments of counsel for the respective parties, and analyzed statutory and decisional law of Florida.

Based upon the parties' stipulations and the evidence and testimony presented, I find:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.
2. The parties' stipulations and agreements, set forth in the pretrial compliance questionnaire are accepted, adopted and made an order of the Office of the Judge of Compensation Claims.
3. Any and all issues raised by way of the Petitions for Benefits ("PFB"), but which issues were not dismissed or tried at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the Claimant and, therefore, are Denied and Dismissed with prejudice. See, Scotty's Hardware v. Northcutt, 883 So.2d 859 (Fla. 1st DCA 2004).
4. Claimant, Mark Aldridge, testified he has been with the Escambia County Sheriff's Department for over eighteen (18) years. He testified to having four (4) separate dates of accident. On 08-17-02 he was instructed by his supervisor to go to the emergency room after complaining of chest pains. He stated he believed he had pulled a muscle or had indigestion, underwent catherization with Dr. Borganelli on 08-20-02, but was never advised he had any heart disease. On 05-16-06, while sitting on a bench at home smoking a cigarette, he fainted. After advising his wife of the event, rescue was contacted and he was taken to the emergency room. He was again worked up, but was not advised he had any heart disease. On 07-23-06, following investigating a death case and driving down the highway, he felt faint, pulled over and passed out. He treated thereafter with Dr. Videau. Finally on 11-18-06, while wearing a heart monitor at work, he fainted again. Claimant testified he takes four (4) different medications for hypertension, a low dose aspirin for his heart and Zoloft for anxiety. He has smoked a pack to a pack and one-half of cigarettes a day since he was 16, has had high blood pressure for over ten (10) years, has high cholesterol, but refuses to take medications, has sleep apnea and has a sister with heart problems.
5. Dr. Rodney Powell is board certified in cardiovascular disease and internal medicine and served as the E/C's IME in this matter. He reviewed medical records and examined Claimant 11-29-07. At that time, Claimant was 51 years of age and had been diagnosed with long standing hypertension. Claimant advised Dr. Powell he had chest discomfort in 2000 but did not seek medical treatment until August 2002. At that time, Claimant underwent an unremarkable stress test followed by catherization revealing minor coronary disease. Subsequent to August 2002, Claimant did well until February 2006 when he developed syncope episodes. Again, Claimant did not seek medical care until after a 05-15-06 syncope episode when he was seen at Sacred Heart Hospital and diagnosed with vasovagal syncope. Additional medical tests in August 2006 were unremarkable though a sleep study in September 2006 resulted in a diagnosis of severe sleep apnea. On 10-01-06, Claimant experienced another syncope episode and a heart monitor study was undertaken. On 11-18-06, while wearing the monitor, Claimant experienced another syncope episode during an 8.3 second heart stoppage. Dr. Powell agreed with Dr. Al-Sheikh diagnosis of hypersensitivity with sinus arrest (sick sinus syndrome). Dr. Al-Sheikh implanted a pacemaker on 11-21-06. According to Dr. Powell, Claimant's heart rhythm disturbance was the cause of his syncope episodes and the pacemaker implantation has

prevented any further such episodes to date. As a result of his IME, Dr. Powell's diagnosed heavy tobacco usage; longstanding hypertension; significant dyslipidemia; mild to moderate coronary disease; sick sinus syndrome; and implantation of a pace-maker.

6. Regarding Claimant's hypertension, Dr. Powell testified Claimant has various risk factors including smoking, obesity, alcohol intake, sleep apnea and stress. In his opinion, while a high stress job such as Claimant's may exacerbate blood pressure problems, the major contributing cause of Claimant's hypertension is his medical history, i.e., the presences of various risk factors, not Claimant's occupation.

7. Regarding Claimant's heart disease, Dr. Powell testified risk factors for the same including smoking, obesity, dyslipidemia and hypertension, were present. He testified stress is not a major risk factor for heart disease. It was his opinion the major contributing cause of Claimant's heart disease was again his medical history, i.e., the presence of risk factors rather than Claimant's occupation.

8. According to Dr. Powell, risk factors are different that causes. He agreed an individual may have all of the risk factors for hypertension and/or heart disease yet may never develop either. At the same time, an individual may exhibit none of the risk factors yet be diagnosed with either or both conditions. Thus, while he believes the risk factors present in this instance are the cause of Claimant's hypertension and heart disease, he admits there is no known cause for Claimant having either condition.

9. Dr. Brent Videau saw Claimant, or Claimant's wife, at church and after learning of his syncope episodes, advised Claimant to make an appointment. On 08-15-06, Claimant was seen and advised Dr. Videau of several syncope episodes including 04-06-06 at home getting coffee; 05-15-06 at home doing laundry; 06-24-06 while on the river; and 07-04-06. A stress test was normal and a heart catherization performed 08-20-06 revealed minimal arterial plaque but normal heart function. Claimant was taken off work however, until 09-12-06. In later visits with the doctor, Claimant advised him of additional syncope episodes on 09-27-06, 10-17-06, 10-27-06 and 10-30-06. Claimant was diagnosed with neurocardiogenic syncope, a form of vasovagal syncope, and underwent heart monitoring ultimately revealing the 8.3 second heart stoppage and implantation of a pacemaker.

10. Medical records in evidence reveal that on 08-16-02 Claimant was seen at Sacred Heart Hospital complaining of chest pain Claimant believed due to either muscle strain from weight lifting activities or indigestion. He followed-up thereafter on 08-19-02 with Dr. Borganelli and the doctor, being suspicious of angina, ordered a catherization, performed 08-20-02 revealing, according to Dr. Videau's note of 08-15-06, non-obstructive coronary artery disease. On 11-11-04, Claimant was again seen at Sacred Heart Hospital for chest pain which Claimant stated felt like pleurisy. The ER physician contacted Dr. Velusamy who requested myocardial perfusion imaging which was performed and was normal. Claimant was discharge home with instructions to follow-up with Dr. Velusamy.

11. On 05-15-06 Claimant testified he was home smoking when he passed out and was transported to Sacred Heart Hospital. Dr. Dmytrenko diagnosed vasovagal syndrome and recommended a cardiology work-up. Dr. Ramos, after noting a negative tomogram and negative cardiac enzymes but subtle changes in Claimant's electrocardiogram since 2004, provided a diagnosis of syncope of either neurological or cardiovascular etiology. Dr. Borganeli, cardiologist, noted a history of mild coronary artery disease per Claimant's 2002 heart catherization.

12. On 07-23-06, Claimant experienced another syncope episode driving from a death investigation scene. When he advised his supervisor the following day, he was taken off work until medical clearance was received. Such clearance was not obtained until 09-12-06. In the meantime, on 08-24-06, Claimant saw Dr. Videau for a tilt table test at Sacred Heart Hospital and advised of a further syncope episode earlier in the day. (Dr. Videau, whose opinions are inadmissible, indicated he did not believe Claimant's syncope was vasovagal as there was no evidence suggesting ventricular or cardiac dysrhythmia, an opinion not supported by the facts as revealed by halter monitoring in November 2006. Were his opinions admissible, I would reject the same in favor of Dr. Powell's opinions finding Dr. Videau's opinions lack sufficient factual predicate. See, Island Hoppers, LTD v. Keith, 820 So.2d 967, 971 (Fla. 4th DCA 2002) and also, Arkin Construction Co. v. Simpkins, 99 So.2d 557, 561 (Fla. 1957).) Dr. Verma was consulted and as the electrocardiogram was normal, he recommended electrophysiology testing followed by halter monitoring. Dr. Messina diagnosed sleep apnea unrelated to his syncope episodes.

13. On 10-27-06, Claimant experienced another syncope episode and was again off work until 11-10-06. Thereafter on 11-18-06, while undergoing halter monitoring, Claimant experienced another syncope episode as a result of an 8.3 second heart stoppage. He was again ordered off work, underwent implantation of a pacemaker on 11-21-06 and was released to return to work 12-11-06.

14. Ch. 112.18(1), F.S. provides that "[a]ny condition or impairment of health of any... firefighter or any law enforcement officer...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." The Supreme Court in Caldwell v. Division of Retirement, 372 So.2d 438, 441 (Fla. 1979) held this presumption relieves firemen and police of the necessity of proving causation of the disease and "cast on the employer the burden of persuading the trier of fact that the disease was caused by a non-occupational related agent."

15. To be entitled to the presumption, a claimant must prove each of the four (4) elements: (1) he/she is a member of the protected class; (2) he/she passed a pre-employment physical indicating the disease was not then present; (3) he/she has since such time been diagnosed with the disease; and (4) the disease has resulted in disability.

16. At the outset of the hearing, the E/C conceded Claimant is a member of the protected class and passed a pre-employment physical. The E/C also conceded that if the opinion testimony of Dr. Videau is deemed inadmissible,

which such has been, as Dr. Powell has diagnosed Claimant with heart disease regarding the 11-18-06 date of accident, Claimant will have satisfied the diagnostic element of the presumption regarding the 11-18-06 date of accident.

17. If a claimant is successful in proving each element of the presumption, the burden of proof shifts to the E/C to offer evidence sufficient to rebut the presumption that the disease is work related. To rebut such presumption, the E/C must present evidence sufficient to persuade “the trier of fact that the disease was caused by a non-occupationally related agent”, Caldwell, 372 So.2d at 441; “evidence that convinces a JCC that the disease was caused by some non-work related factor”, Saldana v. Miami-Dade County, ___ So.2d ___, 33 F.L.W.D. 712 (Fla. 1st DCA, March 10, 2008); or “evidence that the disease was caused by a specific non-work-related event or exposure,” Butler v. City of Jacksonville, ___ So.2d ___, Case No. 1D06-5918 (Fla 1st DCA May 8, 2008). Whether the evidence necessary to rebut the presumption must be clear and convincing or merely competent and substantial, “simply submitting evidence creating a conflict... (does)... not rebut the presumption,” Jones v. Dept. of Health and Rehabilitative Services, 552 So.2d 926, 928 (Fla. 1st DCA 1989). “The presumption would be meaningless if the only evidence necessary to overcome it is evidence that there has been no specific occupationally related event that caused the disease.” Caldwell, 372 So.2d at 441.

18. It is the E/C contention there are two (2) separate standards for rebutting the presumption which arises under Ch. 112.18(1). If a claimant relies solely upon the presumption and presents no evidence his work contributed in any way to his heart disease or hypertension, the E/C may rebut the presumption by presenting competent substantial evidence. However, if a claimant presents some evidence his work contributed to either or both his heart disease and hypertension, the E/C must present clear and convincing evidence to rebut the presumption. The E/C in the instant matter contends Claimant has presented no objective medical evidence of any work related cause of either heart disease or hypertension and that the E/C has presented competent substantial evidence to rebut the same.

19. Dr. Powell has enumerated numerous risk factors which the medical community considers likely causes of heart disease and hypertension and while he did express an opinion these risk factors are the cause of Claimant suffering both heart disease and hypertension and not Claimant’s employment, he admitted there are no known causes for Claimant having either condition.

20. In enacting the heart/lung statute, the legislature must have been aware of the medical community’s opinion, as was expressed by Dr. Powell, that risk factors such as those present in this case, are considered substantial factors in the development of hypertension and heart disease. Despite this, or in response thereto, the legislature made a determination that appropriate public policy was to provide police officers, such as Claimant, with a presumption his heart disease and hypertension are the result of his work activities.

21. I do not find it necessary to determine whether the burden on the E/C, in rebutting such presumption, is to present evidence which is merely competent and substantial or evidence which is clear and convincing. Clearly the

lesser burden is one of competent and substantial evidence, and in this instance, I find the E/C has failed to present sufficient competent substantial evidence to rebut the presumption. While the E/C may not be required to offer evidence of some other specific non-occupational hazard, see, Lentini v. City of West Palm Beach, ___ So.2d ___, Case No. 1D07-0618, 1D07-2324 (Fla 1st DCA May 5, 2008) and Saldana, certainly something more than a litany of known risk factors is necessary to convince the JCC the disease was caused by some non-work related agent or factor. In Lentini, claimant had a congenital heart defect which medical testimony established caused his condition, not his work. In City of Temple Terrace v. Bailey, 481 So.2d 49 (Fla. 1st DCA 1995), normal progression of claimant's congenital heart condition was determined to be the cause, not work. In Saldana, claimant had a pre-disposition to hypertension; its onset occurred before his employment; he failed to obtain treatment; the development of his hypertensive heart disease resulted from such untreated hypertension; and the JCC determined none of these factors had anything to do with his work duties. The evidence in these three (3) cases is the type of which convinces and persuades a JCC that the disease at issue, whether hypertension or heart disease, arose from non-work related events and circumstances and is thus sufficient evidence to rebut the presumption. Unlike the three (3) cases cited above, no such evidence was offered. Rather, the only evidence presented was the existence of risk factors and I find the mere existence of such risk factors, without more, is insufficient to convince this JCC Claimant's heart disease and hypertension were the result of any non-work activity, factor, event or exposure sufficient to rebut the statutory presumption.

22. To find, as the E/C suggest, that presenting evidence of risk factors alone is sufficient to overcome the presumption would render the statutory presumption meaningless to the vast majority of police officers. If the E/C were correct, the only officers likely to benefit from the presumption would be those young enough that they have not yet developed high blood pressure, diabetes, high cholesterol, weight gain, or stress from years of service in a hazardous, anxious, dangerous and difficult job which the legislature singled out in enacting Ch. 112.18(1), F.S.

23. Even if mere competent and substantial evidence is deemed sufficient to rebut the presumption, I find the E/C has failed to present such evidence even when medical records since 1999 of Claimant's personal physician, Dr. Paul Ramos are considered. These records indicate Claimant consumes two (2) to three (3) beers per day and despite ceasing such consumption briefly around 03-04-02, he resumed such consumption prior to his visit 08-20-03. Claimant also has been non-compliant in taking his hypertensive medications and further has refused to take any medication for his lipids and cholesterol resulting in the physicians nurse calling Claimant's wife 05-19-05 to warn of the high risk of "MI & CVA" should such non-compliance continue. While I find such evidence approaches that point where the JCC in Saldana concluded the presumption had been rebutted, I am not convinced Claimant's hypertension and heart disease "was caused by some non-work-related factor" Saldana, or "a specific non-work-related event or exposure". Butler. Had Claimant's hypertension pre-existed his employment as was the case in Saldana, the decision regarding compensability of Claimant's heart disease might be otherwise. However, neither hypertension nor heart disease pre-existed Claimant's employment with the Sheriff's Department and both are presumed to be the result of his employment provided there is evidence of disablement.

24. With regards to Claimant's alleged date of accident of 08-17-02, even after being diagnosed with a disease, "neither compensation nor benefits are available until the employee suffers disablement." City of Port Orange v. Sedacca, 953 So.2d 727, 729-30 (Fla. 1st DCA 2007). Disablement is defined as "the event of an employee's becoming actually incapacitated, partially or totally, because of an occupational disease, from performing her or his work... and disability means the state of being so incapacitated." Ch. 440.151(3), F.S. (2002). In other words, until actually incapacitated, at least partially, a claimant's disease has not resulted in disablement. In Sledge v. City of Ft. Lauderdale, 497 So.2d 1231 (Fla. 1st DCA 1996), the First District ruled that disablement only occurs when the occupational disease results in a stoppage or loss of earnings and that the presumptive diseases contained in Ch. 112.18(1) are occupational diseases.

25. Claimant was diagnosed with hypertension at some point in time subsequent to his employment, but prior to the alleged 08-17-02 date of accident. No evidence was presented that Claimant's hypertension resulted in any lost time from work or that such hypertension adversely impacted Claimant's job performance in any meaningful way. No evidence was presented that Claimant's suffered any disablement as a result of his hypertension on or about 08-17-02. Claimant therefore is not entitled to rely upon the presumption provided by Ch. 112.18(1), F.S.

26. Claimant was diagnosed with coronary artery disease following a catherization performed 08-20-02. While Claimant may have been unable to work or may have lost time or his job performance may have been adversely impacted in some manner as a result of Claimant going to Sacred Heart Hospital on 08-17-02 or undergoing catherization on 08-20-02, there is no evidence, either lay or medical, that Claimant's visit to the hospital in August 2002 was in anyway related to the heart disease diagnosed following catherization on 08-20-02. Rather, the evidence, both lay and medical, supports a finding Claimant's chest pain precipitating such hospital visit was due to either musculoskeletal pain from weight lifting activities or indigestion, not Claimant's heart disease. As a result, Claimant has failed to satisfy his burden of establishing his heart disease resulted in disablement during this period. In conclusion, regarding the alleged 08-17-02 date of accident, neither Claimant's hypertension nor his heart disease are compensable, there being no evidence of disablement as a result of either condition.

27. With regards to the alleged dates of accidents of 05-16-06, 07-23-06 and 11-18-06, the appropriate statutory provision is Ch. 440.151(3), F.S. which defines disablement as a disability as described in 440.02(13). Referring to Ch. 440.02(13), the same 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."

28. With regards to Claimant's hypertensive condition, again, neither Claimant nor any physician testified Claimant was on any work restrictions or missed any time from work, nor suffered any loss of earnings as a result of his hypertension. The evidence does not support a finding Claimant suffered any disablement or disability as a result of his hypertension during any one of these latter three (3) dates of accidents and Claimant therefore is not entitled to

rely upon the presumption provided by Ch. 112.18(1), F.S.

29. Unable to rely upon the presumption with regards to his hypertension from any one of the four (4) alleged dates of accident, for the same to be deemed compensable, Claimant must show by competent substantial evidence that his employment is the major contributing cause of his hypertensive condition. No medical evidence attributes Claimant's hypertension to any specific cause. Ch. 440.09(1), F.S. requires Claimant further prove his injury, its occupational cause and any resulting manifestations or disability, to a reasonable degree of medical certainty and based upon objective relevant findings. The Claimant must also prove his work accident or exposure is the major contributing cause of his hypertensive condition. I specifically find that without the benefit of the presumption Claimant has failed to meet the aforementioned burden. Therefore, Claimant's hypertensive condition is not compensable. See, Miller v. City of Delray Beach Police Dep't, 920 So.2d 768(Fla. 1st DCA 2006). As Claimant has not proven disablement as a result of his hypertension, such disease is not, at this time, ripe for adjudication and thus not a compensable condition. Should Claimant's hypertension become partially or totally disabling in regards to his duties as a police officer, nothing in this decision precludes his seeking a determination as to compensability at that time.

30. With regards to Claimant's heart condition and the alleged dates of accidents of 05-16-06, 07-23-06 and 11-18-06, I accept Dr. Powell's opinion that Claimant's syncope episodes were the result of a heart rhythm disturbance, confirmed by the 8.3. second heart stoppage on 11-18-06, implantation of a pacemaker and non-recurrence of syncope episodes thereafter. I also find the evidence clearly support that on each of these three (3) dates of accident, Claimant suffered disablement as a result of such heart disease. As such, having previously determined the E/C failed in rebutting the presumption, I find Claimant's heart disease as a result of the accidents of 05-16-06, 07-23-06 and 11-18-06, is compensable. It is therefore,

ORDERED AND ADJUDGED that:

1. Claimant's claim for compensability of his heart disease as a result of the accidents of 05-16-06, 07-23-06 and 11-18-06, are **GRANTED**. Claimant is entitled to attorney's fees and taxable costs for the prosecution of these benefits, and they are **GRANTED**. Jurisdiction is reserved for determination of the appropriate amount of such fees and costs.

2. Claimant's claim for compensability of his heart disease as a result of the accident of 08-17-02 is **DENIED**. As to this claim, the E/C shall go hence without day.

3. Claimant's claim for compensability of his hypertension is **DENIED** without prejudice.

DONE AND ELECTRONICALLY MAILED this 11th day of June, 2008, in Pensacola, Escambia County, Florida.



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