

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

Randall Murph, Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 07-011340NSW
Escambia County Sheriff's Department/Preferred Governmental Claim Solutions, Employer/ Carrier/ Servicing Agent.)	Accident date: 3/31/2003
)	

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 pursuant to the heart/lung statute, penalties, interest, costs and attorney's fees. The Petition for Benefits was filed 04-25-07. Mediation was conducted on 07-03-07 sixty-nine (69) days after the petition was filed. The parties' pretrial compliance questionnaire was filed 07-16-07. The final hearing occurred three hundred eighty-two (382) days after the petition was 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 07-16-07.
- #2. E/C's Supplemental Pretrial Stipulation filed 07-25-07.
- #3. Petition for Benefits filed 04-25-07.

JOINT EXHIBITS:

None.

CLAIMANT'S EXHIBITS:

- #1. Deposition of Dr. Muthu Velusamy taken 03-25-08.

E/C's EXHIBITS:

- #1. Wage Statement dated 04-26-07.
- #2. Notice of Denial dated 02-28-07.

- #3. Claimant's Pre-Employment physical dated 06-10-88.
- #4. Deposition of Dr. Rodney Powell taken 10-24-07.

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. At the outset of the hearing, the parties stipulated the sole issue for determination is whether the E/C has rebutted the statutory presumption under Ch. 112.18(1), F.S. The E/C withdrew its notice and statute of limitations defense and conceded Claimant is entitled to the statutory presumption with regards to his heart disease. The E/C further conceded if it is determined the E/C failed to rebut the presumption regarding Claimant's heart disease, the E/C shall be responsible for care and treatment of Claimant's hypertension.
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, Randall Murph, is 50 years of age and testified in 2003 his family physician referred him to Dr. Schang, a cardiologist. He treated with him until 2005 when Dr. Velusamy assumed his care. He testified to undergoing bypass surgery in March 2003, following which he lost fifty (50) pounds and no longer suffered from sleep apnea which he had been diagnosed with in 1998. He was diagnosed with hypertension in 1994.
5. Dr. Muthu Velusamy is a cardiologist and assumed care and treatment of Claimant on 04-13-05 from Dr. Stephen Schang. By agreement of the parties, he served in this instance as the Claimant's IME. Dr. Velusamy stated he first saw Claimant with complaints of chest pain and suspected acute coronary syndrome, coronary artery disease (CAD), high cholesterol and hypertension of unknown etiology.

6. From the records reviewed, Dr. Velusamy testified Claimant was admitted to Sacred Heart Hospital in late March 2003 for chest pain which had been present off and on for a year. He underwent catheterization and was diagnosed with CAD and two (2) blocked arteries. As a result, on 03-31-03 Claimant underwent bypass surgery performed by Dr. Vassiliades. According to Dr. Velusamy, this surgery would have disabled Claimant for approximately six (6) weeks.

7. On 07-29-03, Claimant underwent catheterization and stent placement. Halter monitoring in September 2003 demonstrated Claimant was experiencing extra heart beats. In November 2003 a stress test and imaging revealed reduced performance of the left ventricle. Due to continuing chest discomfort, additional catheterizations were conducted 04-21-04 and 04-14-05, but without stenting. An electrocardiogram on 10-18-06 identified leakage of the mitral and tricuspid valves as well as thickening of the ventricle Dr. Velusamy believed was likely due to high blood pressure. Due to progression of Claimant's heart disease, catheterization was again performed in September 2007.

8. According to Dr. Velusamy, risk factors for the development of heart disease include gender, males being at greater risk than females, hypertension, high cholesterol, smoking, diet and to a lesser degree, stress. In his opinion, all of these risk factors are present in this case and contributed to Claimant developing CAD, including his work as a police officer, but he is unable to quantify the extent any one risk factor alone may have contributed. He does not believe Claimant's job as a police officer is 50% or more of the cause of his CAD. He did state an individual may have CAD with none of the risk factors while another individual with all of the known risk factors may never have CAD.

9. Medical records attached to Dr. Velusamy's deposition include records from Dr. Schang including the following:

03-18-03 - Claimant seen with chest pain off and on for the past year; hypertensive for some time, smoked ten (10) years before quitting in 1981.

05-27-03 - Claimant returning to work with the Sheriff in investigation rather than patrol, unlikely strenuous activity will be encountered such as confrontation with criminals; clearing him to return to work.

09-19-06 - Claimant returns complaining after "wrestling with a law breaker last... very short of breath and had some chest pressure."

Vital statistics chart from 03-19-03 to 11-22-07 indicate Claimant's weight has fluctuated from a low of 220 to a high of 243.

10. Dr. Randall Powell is a cardiologist and internal medicine practitioner. He served as the E/C's IME in this matter, reviewed medical records and examined Claimant on 09-27-07 diagnosing chest discomfort of unknown

etiology but with multiple possibilities. Dr. Powell discussed the medical history as is set forth above and testified Claimant would have been disabled due to the bypass procedure for one (1) to three (3) months and would have been disabled from catherizations for one (1) to two (2) weeks. He also identified various risk factors for heart disease present in this case which may be the cause of Claimant having developed heart disease including family history, smoking (though Claimant has not smoked in 26 years), high cholesterol and/or lipids, hypertension, and to a lesser extent, stress. In his opinion, in combination, these risk factors are the major contributing cause of Claimant's heart disease although he stated he cannot pinpoint any one cause nor can he quantify the extent to which each risk factor may have contributed to Claimant's heart disease. He also testified an individual may have CAD with none of these risk factors while another individual with all of the known risk factors, may never develop CAD. In his opinion, Claimant's work as a police officer is not the major contributing cause of his heart disease.

11. 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."

12. 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.

13. 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.

14. 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.

15. I find Drs. Velusamy and Powell are in agreement that Claimant has numerous risk factors which the medical community considers likely causes of heart disease. Both physicians agree an individual may have CAD while experiencing none of the risk factors, or may have all such risk factors yet never develop CAD. Both agree there is no medical means of measuring the extent to which any risk factor may contribute to CAD. Both agree each of Claimant's risk factors, including stress from work as a police officer, contributed to the development of his CAD, but to an unknown and unquantifiable extent. Both agree that alone, no individual risk factor can be deemed the cause of Claimant's CAD, but in concert, Claimant's risk factors would be the major contributing cause of his having developed CAD.

16. 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 was the result of his work activities.

17. 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. ID07-0618, ID07-2324 (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.

18. 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. It is therefore,

ORDERED AND ADJUDGED that:

1. Claimant's claim for compensability of his heart disease is **GRANTED**. Claimant is entitled to attorney's fees and taxable costs for the prosecution of such benefit, and they are **GRANTED**. Jurisdiction is reserved for determination of the appropriate amount of such fees and costs.

2. Having determined Claimant's heart disease compensable, Claimant's claim for compensability of his hypertension is **GRANTED**. Claimant is entitled to attorney's fees and taxable costs for the prosecution of such benefit, and they are **GRANTED**. Jurisdiction is reserved for determination of the appropriate amount of such fees and costs.

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



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