

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
FT. LAUDERDALE DISTRICT OFFICE

Leslie Ortagus,	)	
Employee/Claimant,	)	
	)	
vs.	)	
	)	OJCC Case No. 09-000529GBH
Pembroke Pines Fire Department,	)	
Employer,	)	Accident date: 5/11/2005
	)	
and	)	
	)	
Gallagher Bassett Services, Inc.,	)	
Carrier/Servicing Agent.	)	

FINAL COMPENSATION ORDER

After due and proper notice to the parties, the above entitled cause came before the undersigned Judge of Compensation Claims on October 6, 2009. This order resolves the petition for benefits filed with DOAH on January 8, 2009.

**A. Stipulations:**

The parties stipulated to the following:

1. The undersigned has jurisdiction over the parties and subject matter.
2. That venue of the claim is in Broward County.
3. There was an employer/employee relationship on the date of accident.
4. Workers' compensation insurance coverage was in effect on the date of accident.

**B. Claims and Defenses:**

1. Claims were made for the following benefits:
  - a. Authorization for evaluation, treatment, and payment, with a board certified cardiologist to treat his 112.18 condition, heart disease;
  - b. Authorization for evaluation, treatment, and payment, with a board certified cardiologist to treat his 112.18 condition, hypertension.
  - c. Interest and Penalties on unpaid benefits.
  - d. Attorney's fees and costs

- e. Claimant further asserted in the pretrial stipulation that the employer/carrier/servicing agent has denied the compensability of the accident or injury.
2. The Employer/Carrier asserted the following defenses:
    - a. There is no competent, substantial evidence to support the foregoing medical only claim.
    - b. The Employer/Servicing Agent asserts that the presumption of Section 112.18, F.S is no longer applicable since the Claimant's hypertension condition is not resulting in any type of disablement. Claimant has reached Maximum Medical Improvement and has remained gainfully employed with the City of Pembroke Pines, without disablement.
    - c. The Claimant is not disabled as a result of his hypertension condition. The episode/event of May 11, 2005 is no longer the major contributing cause of the Claimant's condition for which treatment is sought.
    - d. The Employer/Servicing Agent asserts the application of Section 440.09, F.S. and that the Claimant's accident of May 11, 2005 is no longer the major contributing cause of the Claimant's condition for which treatment is sought especially since the Claimant's hypertension condition is not resulting in a disablement.
    - e. The Employer/Servicing Agent's failure to deny compensability within 120 days waives only their rights to contest an injury "arose [out] of and occurred within the course of employment, of the Claimant's employment." The Employer/Servicing Agent who does not deny compensability within 120 days has not waived anything beyond the ability to contest the presumptive injury was in the line of duty.
    - f. In this instant case, the Employer/Servicing Agent is asserting that the statutory presumption provision of Section 112.18, F.S. is no longer applicable in light of the fact that the Claimant's hypertension condition is not disabling and/or causing any type of disablement to the Claimant.
    - g. The Claimant's presumed compensable condition involving high blood pressure is no longer a major contributing cause of which treatment is sought in light of the contention that the high blood pressure condition of the Claimant is not causing disability and therefore, the presumption at this time does not apply.
    - h. The Claimant's hypertension condition is not the type included/covered by the presumption of Section 112.18, F.S. The presumption provision of Section 112.18, F.S. is not applicable since the Claimant is not only not encountering any type of disablement

attributed to the hypertension condition, but that the Claimant's need for treatment is due to non-compensable factors, reasons, and/r causes, i.e., congenital, etc.

- i. Alternatively, the Employer/Servicing Agents assert that the Claimant's need for any type of medical/health care is due to subsequent intervening event/accident and/or injuries.
  - j. Employer/Servicing Agent objects to the presentation of any medical evidence and/or testimony that violates Section 440.13, F.S. (Specifically, all medical/health care testimony needs to be from an authorized health care provider, party IME physician, and/or Expert Medical Advisor appointed by the Judge of Compensation Claims and/or the Division of Administrative Hearings). The Claimant's hypertension condition is idiopathic.
  - k. **DEFENSE TO THE ISSUE OF COMPENSABILITY:** The Employer/Servicing Agent acknowledges that it did not deny compensability within 120 days of the May 11, 2005 episode, but the Employer/Servicing Agent can assert that the presumed condition that resulted from the event of May 11, 2005 is no longer the major contributing cause for which treatment is sought. Section 112.18 F.S. is applicable during the periods when the presumed condition is resulting in disablement. The Claimant's condition is no longer disabling in any manner and he is able to engage in his profession as a Fire Fighter for the City of Pembroke Pines. (The Employer/Servicing Agent further incorporate all the defenses which have been previously stated in the prior provisions of the Pretrial-Trial Stipulation including Subsection II; Sub paragraph 1).
  - l. **PICA:** There is no competent substantial evidence to support the claim for penalties, interest, costs and attorney's fees and the Employer/Servicing Agent denies responsibility for same.
- C. Documentary Evidence:** The following documentary matters were offered into evidence as exhibits by Claimant (C), Employer/Carrier/Servicing Agent (E/C) or Jointly by the Claimant and Employer/Carrier (J).

**Exhibit #**

1. Pretrial Stipulation (Judge)
2. Petition for Benefits (J)
3. Response to Petition for Benefits (J)
4. Notice of Denial (J)
5. First Report of Injury (J)
6. Deposition Transcript of Theodosha King (With Attachments) (C)
7. Employer/Servicing Agent Supplement to Uniform Statewide Pretrial Stipulation (E/C)

8. Employer/Servicing Agent's Second Supplement to Uniform Statewide Pretrial Stipulation (E/C)
9. Deposition Transcript of Dr. Alan Buhler with attachments (E/C)
10. Deposition Transcript of Dennis M. Spiller, D.O. (E/C)
11. Deposition Transcript of Leslie Ortagus (E/C)
12. Employer/Servicing Agent's Trial Memorandum (E/C) Identification
13. Claimant's Trial Memorandum (C) Identification
14. Order Awarding Compensability (C)<sup>1</sup> and case law, statutory authority- Identification

**D. Live Testimony:**

1. Leslie Ortagus
2. Theodosha King

**E. Findings of Fact and Conclusions of Law:**

While I have not detailed a complete resume of all the facts and evidence presented before me, I have carefully considered it in making my findings of fact and conclusions of law, resolving all conflicts where they may exist. I have evaluated the live testimony of the witnesses listed above and have carefully observed the conduct and demeanor of these witnesses. I have carefully evaluated the medical records and the deposition testimony submitted. Upon consideration of the evidence presented, the argument of counsel and the stipulations of the parties all of which I have carefully reviewed, the undersigned finds as follows:

**FACTS**

1. According to the First Report of Injury, Claimant's illness, hypertension, was reported on May 11, 2005. This document noted that the Claimant was undergoing an annual physical and the doctor stopped the stress test due to an increase of blood pressure above allowable limits. The Notice of Denial prepared on August 21, 2008 noted that the E/C denied benefits for the following reasons: "No disablement, no application of presumption per (Section 112.18, FS.); Claimant at MMI; with 0% PIR [permanent impairment rating]; No [competent], substantial evidence to support ongoing compensability...."
2. **Claimant's Testimony:** Claimant was hired by the City of Pembroke Pines as a firefighter on September 10, 1985. He was required to undergo a pre-employment physical and to the best of his knowledge he passed.
3. The Claimant testified that he continues to work for the City of Pembroke Pines as a firefighter. On May 11, 2005 he suffered a hypertensive incident during his annual physical. He was advised

---

<sup>1</sup> Robert Jones v. Orange County Fire Rescue and Unisource Administrators, Inc.  
OJCC Case # 05-024126TWS

that the condition was covered under the heart bill and his employer provided workers' compensation benefits for a little over three years before the benefits were discontinued.

4. According to his testimony he was off work for about a week. He worked two days light duty in an office job, and after returning to work he did not miss any additional days as a result of hypertension. After his blood pressure incident on May 5, 2005, he was given blood pressure medication and taken off of his shift. While assigned to light duty he could not respond to a call as a firefighter.
5. After workers compensation benefits were suspended, he received medical care, including his medications, from his health insurance provider. He stated that he pays co-payments for medical treatment and medications. He did not pay co-payments when the Employer provided medical care under workers' compensation.
6. He received medical treatment from Dr. Buhler, a cardiologist, who prescribed medication. The Claimant testified that prior to May of 2005 no one ever advised him that he had high blood pressure. After he saw Dr. Buhler, the Claimant was able to go back to his normal responsibilities as a firefighter. He did not recall receiving any wage loss benefits from workers' compensation.
7. According to the Claimant's testimony, Dr. Buhler never assigned any restrictions or limitations in his duties as a firefighter. He stated that he sees Dr. Buhler every six months and this physician continues to prescribe medications.
8. The Claimant testified that both of his parents have been diagnosed with hypertension and that both take medication for this condition. He testified that he has a brother and a sister and neither has hypertension or a heart condition.
9. **Testimony of Adjuster, Theodosha King:** The adjuster testified that the E/C accepted compensability of the Claimant's condition. According to a Notice of Denial prepared on August 21, 2008 the E/C denied the entire claim. Reasons for the denial included the assertion that no disablement, no application of presumption (Section 112.18, F.S.); Claimant at MMI; with 0% [permanent impairment rating] and no [competent] substantial evidence to support ongoing compensability.
10. The deposition of the adjuster, was taken on September 11, 2009. At the time of her deposition the adjuster testified that she was currently handling approximately 80 heart bill claims. Compensability was denied on the majority of the claims because of no disablement, no lost time involved or [the employee] reached maximum medical improvement (MMI) and returned to work in their normal job capacity, earning the same wage or better. She further explained that 'no disablement' meant that the employee never lost any time from work after the seven day waiting period.

11. The adjuster's notes indicated that the Claimant was given medication to keep blood pressure under control. During her deposition Claimant's counsel asked, "Was there any point in time where Gallagher Bassett authorized Leslie Ortagus to treat for his cardiac conditions, for his hypertension or heart disease?" The adjuster answered in the affirmative. (Exhibit 6 pg. 48) According to her testimony, the First Report of Injury reflected the injury or illness as hypertension. The adjuster testified that it appeared that the employer authorized medical care on May 13, 2005. She further testified that the electronic notes indicated that the entry regarding the authorization was generated on May 24, 2005.
12. The adjuster testified that OccuMed was initially authorized to evaluate and treat the Claimant. Dr. Allen Buhler was subsequently authorized to provide medical treatment. According to the adjuster's testimony, Dr. Buhler first saw the Claimant June 6, 2005. However, there is a DWC-25 dated May 17, 2005 contained in the adjuster's file, which was attached to Exhibit 6. According to this DWC-25 Dr. Buhler saw the Claimant on May 17, 2005. Dr. Buhler noted that the Claimant reached MMI on 5/17/05. The impairment rating appeared to be 0%. The DWC-25 included the following question, "Is a residual clinical dysfunction or residual function loss anticipated for the work related injury?" Dr. Buhler placed an "x" in the box that indicated "no". The diagnoses included on the DWC-25 were elevated BP(blood pressure) HTN (hypertension] and hyperlipidemia.
13. The adjuster stated that Dr. Buhler last saw the Claimant on May 28, 2009. According her testimony Dr. Buhler was authorized to treat the Claimant pursuant to workers' compensation and was paid pursuant to the Florida Workers' Compensation Fee Schedule. Medications were also authorized under workers' compensation. The adjuster testified \$2,191 was paid to medical providers from May of 2005 to August of 2008. According to her testimony the E/SA paid \$10, 318.53 on prescriptions.
14. The adjuster testified that a 120 day pay and investigate letter was never sent on this file and reiterated that medical benefits were provided for approximately three years under workers' compensation. When asked, she agreed that the decision to terminate medical benefits under workers' compensation was because of 'no disability'. When asked why it took her three years before the E/C terminated benefits she stated that she had additional questions for the doctor and that she had been sending request [for information] and the doctor was not responding. She stated that the Claimant was at MMI prior to the time she began handling the file. According to her testimony it took three years to obtain MMI information from Dr. Buhler and for him to provide the impairment rating. The adjuster agreed that the crux of the denial on this claim was that the Claimant no longer suffers a disability, he returned to work, thus [workers' compensation] benefits should be discontinued

15. The adjuster testified that the Claimant started missing time from work on May 12, 2005 and was released to return to work on May 18, 2005. She also stated that the Claimant worked at another station on May 16, 2005 and May 17, 2005 light duty.
16. A note in the adjuster's file dated 5/11/05 was signed by a physician on this same date. The note states, "The employee can perform some of the job requirements and is recommended for temporary out of classification reassignment until cleared for full duty by physician of the employee's choice." A hand written note stated, "Desk Job Temporarily."
17. **According to the adjuster's log notes**, attached to Exhibit 6, this was a medical only claim assigned to short time disability desk due to the fact that the HBP [high blood pressure] was accepted compensable under "this law for fire fighters and law enforcement personal under the presumption law." A 5/16/2005 entry noted that the claim was being reassigned to another adjuster. The following statement was included in the 5/16/2005 entry, "Continue to pay medical benefits only; need proper reserves for long term medical maintenance and prescription maintenance only."
18. An entry in the adjuster log notes dated 7/7/2005 noted that the Claimant was evaluated by Dr. Buhler and placed at MMI and released for full duty work. The entry further noted that the Claimant was placed at MMI with a zero PIR and that his HBP was controlled with Rx [medications]. The entry was authored by Theodotia King. The note indicated that the Claimant was given Lipitor for high cholesterol.
19. An entry on the adjuster long notes dated 1/26/2006 noted that the Claimant was sent a co-pay letter. This entry noted, "MMI/PPI 0% 5-17-05". A 6/14/2006 log note entry indicated that the Claimant was last seen on 5/30/06 and included a statement that "medication was last filled on 5/9/06. Reserves were set for "med" for conservative care..."
20. The Claims Representative sent a letter dated January 24, 2006 to the Claimant stating that Dr. Buhler placed him at MMI on 5/17/05 with a 0% impairment rating. This letter advised the Claimant that he was required to pay a \$10.00 [copayment] for each doctor's visit.
21. On 8/20/2008 the adjuster noted that she was denying the claim due to the reasons stated in the Notice of Denial.
22. **Dr. Alan Buhler:** The deposition of Dr. Alan Buhler was taken on July 15, 2009. Dr. Buhler testified that he is board certified in internal medicine and also board certified in cardiovascular disease. He first saw the Claimant on May 17, 2005. The last time that he saw the Claimant prior to his deposition was May 28, 2009. When Dr. Buhler initially evaluated the Claimant on May 17, 2005 he discussed with the Claimant his elevated cholesterol and evaluated blood pressure in addition to necessary treatment to normalize those values. Treatment for both conditions included medications.

23. Dr. Buhler testified that the Claimant had essential hypertension. He defined essential hypertension as being of an unknown cause that responds to treatment and that the cause of the Claimant's hypertension was unknown. He stated that there was no obvious reversible correctable cause but treatment to normal levels was required.
24. When asked, "Is essential hypertension cardiovascular hypertension?" Dr. Buhler answered in the affirmative. (Exhibit 9 page 28:21-23) When asked, "Is essential hypertension also arterial hypertension?" Dr. Buhler also answered, "Yes". (Exhibit 9 page 28:25; page 29:1-2) According to Dr. Buhler's testimony the Claimant was not suffering from any form of secondary hypertension, such as cancer or renal failure.
25. Dr. Buhler assumed that the cause of the elevated cholesterol, or hypercholesterolemia, was a genetic predisposition. When asked if he could isolate the cause of the Claimant's high cholesterol, Dr. Buhler answered, "No." (Exhibit 9 page 31:5) Dr. Buhler testified that it may be helpful to treat high cholesterol, because it eventually will lead to stiffening of the arteries and increased blood pressure. According to Dr. Buhler's testimony [a cardiologist] could treat hypertension without treating a high cholesterol condition. However, he stated that it would not make any sense. He further stated that all [cardiologist] would treat both. Dr. Buhler testified that he never restricted the claimant from work because of his high cholesterol condition.
26. Dr. Buhler testified that the Claimant reached MMI sometime in 2006 or 2007. He stated that the Claimant would not have any impairment as long as the blood pressure was controlled. Dr. Buhler testified that from the time he initially saw the Claimant he never restricted him from working as a firefighter due to hypertension or high cholesterol condition. However, he stated that he knew the Claimant was placed in a different category. He further testified that he would not restrict the Claimant from firefighter duty.
27. During cross-examination Dr. Buhler testified that prior to his deposition he never placed the Claimant at maximum medical improvement regarding hypertension or heart disease. He did not review the 1996 [Florida Impairment Rating Guide] prior to stating that the Claimant's rating for hypertension and heart disease would be 0%. He also agreed that without reviewing the impairment guides he would be unable to state what the permanent impairment rating would be. Dr. Buhler testified that he was never asked to place the Claimant at MMI prior to his deposition.
28. With regard to future medical care, Dr. Buhler testified that the Claimant needed to continue on his blood pressure and cholesterol medicines, periodic evaluation of adequacy of treatment, and that control of the Claimant's blood pressure would require twice yearly physical examinations. He further stated that because the blood pressure and the elevated lipids, both of which were controlled, are risk factors for coronary artery disease, the Claimant should have a stress test with any change in cardiac symptoms or yearly thereafter.



29. When asked if there was any [laboratory studies] to substantiate that the Claimant was taking his medications for high cholesterol and hypertension, Dr. Buhler stated that the Claimant's cholesterol levels came down by 50 percent. He stated that the Claimant continues refilling his hypertension medication but he had no evidence that the Claimant was actually taking the medications.
30. Dr. Buhler testified that on November 19, 2007 he treated the Claimant for cardiac dysrhythmia, which he described as a subjective feeling of palpitations, skipped or irregular beats.
31. During the deposition of Dr. Buhler, Claimant's counsel offered a prescription from Alberto T. Lojko, M.D. as an exhibit. Counsel for E/C objected asserting hearsay, authentication and relevance. (Exhibit 9 page 23 lines 10-14) I sustain this objection.
32. According to Dr. Buhler's testimony the Claimant had chest pain, he had a cardiac catheterization by another physician and he had an abnormal stress tests and other findings during treatment. He testified that the heart catheterization did not reveal any large vessel disease.
33. Pursuant to Dr. Buhler's testimony he was authorized by the E/C to treat the Claimant's hypertension and heart disease from as early as May 17, 2005 through February 6, 2009.
34. **Dennis M. Spiller, D.O.**: The deposition of Dr. Spiller, a cardiologist licensed to practice medicine in the State of Florida, was taken on July 28, 2009. He testified that he also specializes in internal medicine. He evaluated the Claimant on July 24, 2009. Dr. Spiller performed an independent medical examination on behalf of the E/C. Dr. Spiller testified that the Claimant has a history of hypertension and hyperlipidemia. He stated that the Claimant was doing very well under the care of Dr. Buhler.
35. He stated that the Claimant's family history was noncontributory. He was subsequently asked to assume that the Claimant's father was treated for hypertension and had a myocardial infarction and that his mother was also treated for hypertension. He was then asked if this information would be a significant piece of information in relation to a risk factor involving family history for hypertension and cholesterol and Dr. Spiller answered in the affirmative. (Exhibit 10 page52:1-16)
36. When asked if he could state whether a particular risk factor caused the Claimant's particular condition within a reasonable degree of medical certainty, Dr. Spiller stated he could not say one risk factor because he had multiple risk factors.
37. When asked about maximum medical improvement, Dr. Spiller stated that the blood pressure was elevated and could be improved. He stated that the increase in blood pressure may have been attributed to nervousness on the part of the Claimant. He further stated that it was difficult to

decide whether the elevated blood pressure was a problem, since he only saw the Claimant one time.

38. He stated that he did not check the Claimant cholesterol, but from reviewing medical records opined that the levels could improve. He further stated that the Claimant's primary cardiologist had been adjusting the Claimant's medication
39. He testified that he would defer to Dr. Buhler regarding MMI for hypertension and the [high] cholesterol condition.
40. Dr. Spiller testified that he would not assign any functional restrictions or limitations in relation to the hypertension or high cholesterol condition.
41. Dr. Spiller agreed that essential hypertension was hypertension of an unknown etiology. He stated that that was the predominant form. According to his testimony secondary hypertension was hypertension due to other anatomical or hormonal or chemical causes. He agreed that secondary hypertension was hypertension due to a known cause. Dr. Spiller agreed that all hypertension is cardiovascular in nature. He agreed that the Claimant was taking medications and supplements for hypertension. He also stated that the Claimant was taking a medicine to try to raise his HDL cholesterol, for the purpose of preventing plaque formation in the arteries.
42. When asked, "In order to treat [the Claimant's] hypertension, must you also treat his cholesterol", Dr. Spiller answered in the affirmative. (Exhibit 10 pg. 40:13-15)

#### APPLICATION OF LAW

43. The issue before the JCC is whether the Claimant is entitled to continued medical treatment for hypertension and his 112.18 condition, heart disease.
44. Sec. 112. 18 (1) states in part that, "Any condition or impairment of health of any ... fire control district firefighter or any law enforcement officer or correctional officer as defined in s. 943.10(1), (2), or (3) 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. However, any such firefighter or law enforcement officer shall have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition...."
45. **Hypertension:** It is undisputed that the Claimant was diagnosed with hypertension subsequent to his employment with the City of Pembroke Pines as a firefighter. He testified that he was hired by the City of Pembroke Pines as a firefighter on September 10, 1985. He had to undergo a pre-employment physical and to the best of his knowledge he passed.

46. Claimant was taking his annual physical in May of 2005. During the stress test his blood pressure became too high and he was not permitted to finish the test. He was given blood pressure medication and taken off of his shift. The Claimant testified that he was assigned to a light duty work status which was an office job. While assigned to light duty he could not respond to a call as a firefighter. He stated that he was on light duty for two days. With the exception of the two days of light duty, he was able to continue his duties as a firefighter. The E/C provided medical treatment for the Claimant's hypertension for three years before denying compensability.
47. It was undisputed that the Claimant was diagnosed with essential hypertension. In Bivens v. City of Lakeland and Claims Center, 993 So. 2d 1100 (Fla. 1st DCA 2008) the claimant was employed as a firefighter. The JCC denied compensability of essential hypertension. In affirming this denial, the First District found that there was no record evidence that the JCC could rely on demonstrating that essential hypertension was arterial or cardiovascular in nature. (Id. at 1102). However, in the instant case, both doctors that provided testimony opined that essential hypertension was cardiovascular in nature.
48. Dr. Buhler testified that the Claimant had essential hypertension. When asked, "Is essential hypertension cardiovascular hypertension?" Dr. Buhler answered in the affirmative. (Exhibit 9 page 28:21-23) When asked, "Is essential hypertension also arterial hypertension?" Dr. Buhler also answered, "Yes". (Exhibit 9 page 28:25; page 29:1-2). According to Dr. Buhler's testimony the Claimant was not suffering from any form of secondary hypertension, such as cancer or renal failure. He defined essential hypertension as being of an unknown cause that responds to treatment and that the cause of the Claimant's hypertension was unknown. He stated that there was no obvious reversible correctable cause but treatment to normal levels was required. Dr. Spiller, the E/SA's IME, also agreed that all hypertension is cardiovascular in nature.
49. **Disability:** In order for hypertension to be compensable pursuant to Sec. 112.18 (1) Fla. Stat. it must also result in disability. The presumption is only applicable when a claimant's hypertension results in total or partial disability or death. Bivens v. City of Lakeland, 993 So. 2d at 1102. Disability occurs only when the employee becomes actually incapacitated, partially or totally, from performing his employment. Id. (citing City of Mary Esther v. McArtor, 902 So. 2d 942, 944 (Fla. 1st DCA 2005) quoting Sledge v. City of Fort Lauderdale, 497 So. 2d 1231,1233 (Fla. 1st DCA 1986)). Thus, a finding of disability hinges solely on the employee's ability to earn income, not upon other factors such as whether the employee experienced wage-loss. Bivens v. City of Lakeland, 993 So. 2d at 1102.
50. A note in the adjuster's file dated 5/11/05 was signed by a physician on this same date. The note states, "The employee can perform some of the job requirements and is recommended for temporary out of classification reassignment until cleared for full duty by physician of the employee's choice." There is also a hand written note that states, "Desk Job Temporarily."

51. The adjuster testified that the Claimant started missing time from work on May 12, 2005 and was released to return to work on May 18, 2005. She also stated that the Claimant worked at another station on May 16, 2005 and May 17, 2005 light duty.
52. Also, pursuant to the E/SA's trial memorandum, E/SA initially accepted the compensability of the May 11, 2005 date of accident since the Claimant was placed on a partial disability status by the physicians at OCCMED that resulted in the Claimant working approximately two (2) shifts on a restricted/desk duty.
53. Additionally, the Claimant testified that while assigned to light duty he could not respond to a call as a firefighter. He stated that he was on light duty for two days.
54. The proper inquiry in every case involves two steps. First, a determination must be made as to whether a claimant's medical condition is covered under the Act. Second, if covered, a determination must be made as to what benefits are due. City of Port Orange and PGCS v. Sedacca, 953 So. 2d 727, 735 (Fla. 1st DCA 2007). Claimant developed hypertension, which was compensable, while working as a firefighter. Thus, the employer shall furnish such medically necessary remedial treatment, care and attendance for such period as the nature of the injury or the process of recovery may require. Sec. 440.13(2)(a) Fla. Stat. (2003).
55. With regard to future medical care, Dr. Buhler testified that the Claimant needed to continue on his blood pressure and cholesterol medicines, periodic evaluation of adequacy of treatment, and that control of the Claimant's blood pressure would require twice yearly physical examinations. He further stated that because the blood pressure and the elevated lipids, both of which were controlled, are risk factors for coronary artery disease, the Claimant should have a stress test with any change in cardiac symptoms or yearly thereafter.

### CONCLUSION

56. Claimant was diagnosed with essential hypertension after working for the City of Pembroke Pines for approximately 20 years. He testified that he took a pre-employment physical and as far as he knew he passed. Dr. Buhler and Dr. Spiller opined that essential hypertension was cardiovascular. Dr. Buhler also testified that it was arterial. Although there was conflicting testimony regarding the number of days the claimant was on a light duty work status, it is clear from the evidence that he was placed on light duty for at least two days. The adjuster testified that the Claimant started missing time from work on May 12, 2005 and was released to return to work on May 18, 2005. She also stated that the Claimant worked at another station on May 16, 2005 and May 17, 2005 light duty. While on light duty status the Claimant could not respond to a call as a firefighter. With regard to future medical care, Dr. Buhler testified that the Claimant needed to continue on his blood pressure and cholesterol medicines, periodic evaluation of adequacy of treatment, and that control of the Claimant's blood pressure would require twice yearly physical examinations.

WHEREFORE, IT IS ORDERED and ADJUDGED that:

1. The claim for authorization for evaluation, treatment, and payment, with a board certified cardiologist to treat his 112.18 condition, heart disease is GRANTED as it pertains to the hypertension diagnosis.
2. The claim for authorization for evaluation, treatment, and payment, with a board certified cardiologist to treat his 112.18 condition, hypertension is GRANTED.
3. The claims for interest and penalties on unpaid benefits are DENIED.
4. The claims for attorney's fees and costs are GRANTED.
5. The claim for compensability of the accident or injury is GRANTED.
6. Any issues not addressed herein are deemed denied.
7. Any objections not ruled upon are deemed overruled.

DONE AND ORDERED this 10<sup>th</sup> day of November, 2009, in Lauderdale Lakes, Broward County, Florida.



*Geraldine B. Hogan*

Geraldine B. Hogan  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
Ft. Lauderdale District Office  
4500 North State Road 7, Building I, Suite 200  
Lauderdale Lakes, Florida 33319  
(954)714-3400  
[www.jcc.state.fl.us](http://www.jcc.state.fl.us)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Order was furnished this 6<sup>th</sup> day of November, 2009 by electronic transmission to the parties' counsel of record and by U.S. Mail to the parties.



Assistant to the Judge of Compensation Claims

Leslie Ortagus  
834 Southwest Vineland Court  
Port Saint Lucie, Florida 34986

Pembroke Pines Fire Department  
9500 Pines Boulevard, Building B  
Pembroke Pines, Florida 33024

Gallagher Bassett Services, Inc.  
1301 International Parkway, Suite 230  
Sunrise, Florida 33323

Robert Steven Winess, Attorney  
Robert S. Winess, P.A.  
500 Australian Avenue South, Suite 614  
West Palm Beach, Florida 33401  
scheduling@winesslaw.com; rob@winesslaw.com

Gregory G. Coican, Attorney  
Massey Coican Schuster & Riedhammer, LLC  
707 Southeast 3rd Avenue, 2nd Floor  
Fort Lauderdale, Florida 33316  
coican@masseylaw.com; Eileen@masseylaw.com