

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

John Columbia,
Employee/Claimant,

OJCC Case No. 14-026037EHL

vs.

Accident date: 9/14/2014

City of Tampa/Commercial Risk
Management, Inc.,
Employer/Carrier/Service Agent.

Judge: Ellen H. Lorenzen

FINAL COMPENSATION ORDER ON PETITION FOR BENEFITS OF 11/7/14 and 11/21/14

I held final hearing in this case on 12/10/15 because claimant filed petitions on 11/7/14 and 11/21/14¹ seeking to establish compensability of his atrial fibrillation.² Claimant was represented by Tonya Anne Oliver, Esq., and E/C was represented by L. Gray Sanders, Esq. After reviewing the testimony and the documentary evidence, I found E/C did not rebut the presumption of compensability afforded claimant by F. S. 112.18(1)(a) and awarded claimant medical care.

INTRODUCTION

Claimant was employed by the City of Tampa as homicide detective. On the date of accident, claimant began feeling ill and shaky at work. Paramedics determined he was in atrial fibrillation and claimant was admitted to Tampa General Hospital for treatment. In the litigation claimant sought to establish compensability of his condition through the use of the statutory

¹ A petition was also filed on 8/27/15. While that petition had been mediated, it had not yet been pretried and was set for final hearing at later date. I reserved jurisdiction over that petition and did not rule on any of the claims contained in it at final hearing on 12/10/15.

² A more detailed list of the parties' pretrial stipulations, claims and defenses and my evidence log may be found at appendices 1, 2, and 3 at the end of this order.

presumption of F. S. 112.18(1)(a). E/C took the position it had rebutted the presumption by identifying a non-work related cause of claimant's heart condition and refused to provide the benefits requested.

THE REQUIREMENTS OF F. S. 112.18(1)(a) AND THE BURDEN OF PROOF BORNE BY
EACH PARTY

The presumption of compensability found in F. S. 112.18(1)(a) alleviates an injured employee from the necessity of having to prove medical causation. In order to be able to make use of the presumption, the employee has the burden to prove four elements: first, (s)he must be a member of one of the protected classes of public employees; second, (s)he must suffer from one of the three identified medical conditions; third, (s)he must have some period of disability as a result of the condition; and fourth, (s)he must have undergone a pre-employment physical examination which revealed no evidence of the condition.

If the employee meets her/his burden of proof, the burden of proof shifts to E/C to establish a non-industrial cause of the condition. Caldwell v. Division of Retirement, 372 So.2d 438 (Fla. 1979). E/C meets its burden with evidence that is competent and substantial if claimant offers no medical evidence of causation and relies solely on the presumption to establish compensability. If the injured employee offers evidence of a work-related cause, then the quality of evidence required by E/C to rebut the presumption rises to a level of clear and convincing. Punsky v. Clay County Sheriff's Office, 18 So.3d 577 (Fla. 1st DCA 2009).

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING CLAIMANT'S
ENTITLEMENT TO THE BENEFIT OF THE PRESUMPTION

I found factually, based on claimant's testimony, he was a member of a protected class because he was a sworn law enforcement officer. I found factually, based on the testimony of Drs. Ahmar and Perloff that claimant had heart disease in the form of atrial fibrillation, that claimant suffered from one of the covered conditions. I found factually, based on claimant's testimony he was hospitalized on the date of accident for a week and then unable to return to work for several months, that claimant suffered disability as a result of his atrial fibrillation. Martz v. Volusia County Fire Services, 30 So.3d 635 (Fla. 1st DCA 2010). I found factually, based on the testimony of claimant and Drs. Ahmar and Perloff, that claimant underwent a pre-employment physical examination which revealed no evidence of heart disease or atrial fibrillation.³ Based on these findings of fact, I concluded as a matter of law claimant proved all the elements required by F. S. 112.18(1)(a) and was entitled to make use of the statutory presumption of compensability.

Having concluded claimant successfully proved he was entitled to the benefit of the statutory presumption, I turned to E/C's defense it rebutted the presumption by establishing an actual, non-industrial, cause of claimant's atrial fibrillation.

³ Claimant did have hypertension at the time of hire but withdrew his claim for compensability/treatment of hypertension at the beginning of final hearing. That fact, however, did not preclude claimant from making use of the presumption to establish compensability and obtain treatment of his atrial fibrillation, particularly where the medical testimony of Dr. Perloff established there was no causal relationship between those two conditions. Talpesh v. Village of Royal Palm Beach, 994 So.2d 353 (Fla. 1st DCA 2008).

E/C'S REBUTAL OF THE PRESUMPTION

E/C relied upon the testimony of Dr. Perloff, its independent medical examiner (IME), to rebut the presumption of compensability of claimant's atrial fibrillation. Both Dr. Perloff and Dr. Ahmar (claimant's IME) agreed an over-active thyroid condition (hyperthyroidism) can cause atrial fibrillation. Dr. Ahmar testified claimant did not have hyperthyroidism at the time of his examination (without commenting on the existence or non-existence of this condition on the date of accident) but Dr. Perloff testified claimant's thyroid stimulating hormone (TSH) level noted in the hospital records during his admission indicated claimant was suffering from hyperthyroidism at that time. Claimant agreed he was told he had this condition during the hospitalization and testified he underwent subsequent treatment for it with Dr. McFadden, an associate of Dr. Poritz (who treated claimant in the hospital for an unrelated condition to his parathyroid glands). The treatment, ingestion of radioactive iodine, described by claimant was the one recommended by Dr. Perloff. Despite the fact that Dr. Perloff testified he had access to Dr. Poritz' records, he was unaware claimant underwent treatment for his hyperthyroid condition. I was not provided with any medical records beyond the IME reports and was unable to determine precisely what records either doctor reviewed or whether Dr. Perloff had records of claimant's treatment after his hospitalization in September 2014.

E/C relied on the fact that claimant was suffering from hyperthyroidism on the date of accident and Dr. Perloff's opinion that claimant's hyperthyroidism caused his atrial fibrillation to rebut the presumption of compensability. However, E/C overlooked the balance of Dr. Perloff's

testimony regarding causation: the balance of Dr. Perloff's opinion on causation was that if claimant continued to have atrial fibrillation after completing treatment for hyperthyroidism, then that condition was *not* the cause of his atrial fibrillation. Dr. Perloff further testified the way in which to obtain a definitive opinion regarding causation was for claimant to treat his hyperthyroidism with radioactive iodine and then follow-up clinically to see if his atrial fibrillation recurred.

Claimant testified he continued to have the same symptoms and complaints he had on the date of accident and continued to treat with a cardiologist. He believed he continued to suffer from atrial fibrillation. E/C objected to this testimony as hearsay because claimant formed his belief from statements made to him by his treating cardiologist. I overruled E/C's objection, admitting the testimony as claimant's belief about his condition, but indicated in my ruling I would not accept the testimony as probative of the fact claimant continued to have atrial fibrillation. In the typical workers' compensation case, in which claimant has the burden of proof, claimant's failure to produce medical testimony that he continued to suffer from the compensable injury would be fatal. But presumption cases are not the typical case.

E/C had the burden to rebut the presumption and, because Dr. Perloff testimony was that the method to determine whether claimant's atrial fibrillation was caused by hyperthyroidism was to treat the hyperthyroidism and then see if claimant's atrial fibrillation stopped or continued, E/C had the burden to determine claimant no longer suffered from atrial fibrillation. E/C could have had Dr. Perloff perform a physical examination of claimant but chose not to do so and, because claimant's atrial fibrillation was paroxysmal (not continuous) in nature, Dr. Perloff might not have detected it on the date of the examination. But Dr. Perloff would have

had an opportunity to speak with claimant and learn about his continuing symptoms and treatment for his hyperthyroidism, thus allowing his opinion on causation to be founded on facts apparently not known to him from the medical records. In the alternative E/C could have obtained records or deposed claimant's treating cardiologist and discovered whether claimant continued to have atrial fibrillation. If claimant did not, then E/C would have met the requirements identified by Dr. Perloff for determining the cause of claimant's atrial fibrillation. E/C followed neither of these courses of action.⁴ Thus, while E/C successfully proved hyperthyroidism is *a* cause of atrial fibrillation, it failed to prove hyperthyroidism was *the* cause of claimant's atrial fibrillation because it failed to do the necessary discovery to prove claimant no longer suffered from atrial fibrillation. Orange County v. Wilder, 107 So.3d 480 (Fla. 1st DCA 2013).

I concluded as a matter of law E/C failed to rebut the presumption of compensability afforded claimant by F. S. 112.18(1)(a).

AUTHORIZATION OF MEDICAL TREATMENT

Because I determined claimant was entitled to make use of the presumption of compensability and E/C failed to rebut that presumption, I considered claimant's claim for ongoing medical treatment. Both doctors recommended claimant continue to receive care for his atrial fibrillation and I awarded claimant ongoing care with a cardiologist for so long as the treatment remained reasonable and medically necessary as a result of claimant's compensable condition.

⁴ I denied E/C's request for a second IME with an endocrinologist; see court exhibit 6. This examination would have been irrelevant since claimant had received the recommended treatment for his hyperthyroidism and was taking artificial thyroid as of the time of the hearing as a result of the destruction of his thyroid gland from the treatment.

PAYMENT OF MEDICAL BILLS

Claimant also sought payment of certain medical bills. The first was from Tampa Emergency Medical Services for the ambulance which transported claimant to the hospital on the date of the accident. This bill would have been awardable as necessary emergency care even if I had ruled in E/C's favor on the issue of compensability. E/C's defense was that it never received the bill. However the bill was attached to the petition for benefits and E/C had it within its possession at least by the time the petition was filed. I awarded payment of this bill in accordance with the Florida fee schedule.

The second bill was from Norman Parathyroid Center for surgery to claimant's parathyroid glands on 9/19/14, during claimant's hospitalization. According to Dr. Perloff, this surgery was necessary because claimant had a second medical condition of the parathyroid glands, unrelated to either his atrial fibrillation or his hyperthyroidism. I had no testimony this surgery was emergent in nature and the only medical testimony I had about the surgery (Dr. Perloff's) indicated it was not necessary because of claimant's compensable atrial fibrillation. Neither doctor testified the abnormal function of claimant's parathyroid glands fell within one of the three covered medical conditions. I concluded as a matter of law, claimant failed to prove he was entitled to make use of the statutory presumption of compensability regarding this surgery and, inasmuch as claimant provided no expert opinion proving there was a causal connection between claimant's parathyroid condition and his employment, I denied claimant payment of the bill of Normal Parathyroid Center.

ATTORNEY FEE AND COSTS

The court in Aguilar v. Kohl's Department Stores, 68 So.3d 356 (Fla. 1st DCA 2011) held that it was premature for the judge to award entitlement to fees and costs before each party had an opportunity to argue who was the prevailing party. Accordingly, I reserved jurisdiction on the issue of entitlement to fees and costs until the appropriate motions/petitions are filed.

WHEREFORE, IT IS ORDERED AND ADJUDGED:

1. Claimant's accident and atrial fibrillation are compensable.
2. E/C shall authorize medical care with a cardiologist for claimant's atrial fibrillation for so long as the treatment remains reasonable and medically necessary as a result of claimant's accident.
3. E/C shall pay the charges of Tampa Emergency Medical Services in accordance with the appropriate Florida fee schedule.
4. The claim for payment of the bill of Norman Parathyroid Center is dismissed on its merits.
5. Jurisdiction is reserved to determine who is the prevailing party and entitlement to fees and mutual claims of taxable costs.
6. Counsel shall provide their clients with copies of this order.

DONE AND ORDERED this 11th day of December, 2015, in Tampa, Hillsborough County, Florida.



Ellen H. Lorenzen
Judge of Compensation Claims
Division of Administrative Hearings

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Appendix 1: The parties' prehearing stipulations

At the time of final hearing the parties entered into the following stipulations which I accepted and adopted as findings of fact:

1. I had jurisdiction of the parties and of the subject matter of the petition/claim.
2. Venue was in Tampa District.
3. The correct date of accident was 9/14/14.
4. There was an employer/employee relationship at the time of the accident.
5. There was workers' compensation coverage in effect by the carrier at the time of the accident.
6. There was timely notice of the accident and injury.

Appendix 2: Claims and defenses

The claims made at the time of trial were for determination of the following:

1. Establish compensability of claimant's atrial fibrillation.
2. Authorization of medical care with a cardiologist, primary care physician or internist.
3. Payment of bills of Tampa Emergency Medical Services and Norman Parathyroid Center.
4. Entitlement to costs and attorney's fees at the expense of the employer/carrier.

The defenses raised by the Employer/carrier to the claims were as follows:

1. Claimant is not entitled to presumption of compensability of F. S. 112.18.
2. E/C has rebutted the presumption of compensability of F. S. 112.18.
3. Medical bills have never been submitted to E/SA.
4. There was no entitlement to costs or attorney's fees at the expense of employer/carrier.

Appendix 3: Evidence log

CLAIMANT John Columbia

OJCC# 14-026037-EHL

TRIAL DATE 12/10/15

COURT EXHIBIT	JOINT EXHIBIT	CLAIMANT EXHIBIT	E/C EXHIBIT
1. ID#18 Pretrial stipulation	1. ID#79, 80, 81 and 82 Composite of depositions of Dr. Perloff and their exhibits	1. ID#76 and 77 Deposition of Dr. Ahmar and its exhibits	
2. ID#83 and 84 Claimant's trial memo			
3. ID#86 E/C's trial memo			
4. ID#1, 2, 11 and 12 Petitions for benefits filed 11/7/14 and 11/21/14			
5. ID#10 and 13 Responses to petitions			
6. ID#74, 29, 38, 40, 71 and 72 Composite of my order ruling on claimant's objection to second IME by E/C, E/C's IME designation, claimant's objection, order			

reserving ruling, claimant's amended objection and claimant's legal authority			
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Claimant testified in person at the final hearing.