

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

Nidia Padilla,  
Employee/Claimant,

OJCC Case No. 15-026437WWA

vs.

Accident date: 10/25/2015

State of Florida- DOC- Tomoka  
CI/Division of Risk Management,  
Employer/Carrier/Service Agent.

Judge: Wilbur W. Anderson

**COMPENSATION ORDER**

This is a presumption case arising under section 112.18(1), Florida Statutes (2015). I conclude Claimant's hypertension is compensable, but I also conclude the claims for specific medical and indemnity benefits must be denied.

**PROCEDURAL BACKGROUND**

Claimant filed a petition for benefits on November 10, 2015. The case was mediated on March 14, 2016. Final hearing was scheduled for May 16, 2016, but continued until June 21, 2016, based on the unopposed motion of the Employer/Carrier and Claimant's waiver of statutory time limitations. Claimant is represented by Kristine Callagy. The Employer/Carrier is represented by Sharon W. Hendon.

**CLAIMS**

PFB filed 11/10/2015

1. Temporary Partial Disability: Payment of temporary partial disability from 10/25/2015 to the present and continuing at the correct rate.
2. Temporary Total Disability: Payment of temporary total disability from 10/25/2015 to the present and continuing at the correct rate.
3. Advance payment: Claimant request an advance from the Employer/Carrier in the sum of \$2000.00. Claimant has suffered a physical impairment, actual or apparent as a result of the

work-related accident and injuries. As a result of the accident, Claimant has suffered injury to her body part i.e. heart. Claimant has further suffered a substantial loss of earning capacity as a result of the injuries sustained in this accident. Claimant request authorization for provision and payment of an advance pursuant to F.S. 440.20(12)(c). *This claim was abandoned.*

4. Medical Authorization: Authorization of medical care and treatment with board certified cardiologist.

5. Medical Authorization: Authorization of medical care and treatment with internal medicine specialist. *This claim was abandoned.*

6. Medical Authorization: Authorization of medical care and treatment with primary care physician. *This claim was abandoned.*

7. Attorney Fees: Attorney Fees Pursuant to Section 440.34, Florida Statutes or as otherwise provided by law.

8. Compensability: Compensability of disabling arterial and cardiovascular hypertension and/or heart disease pursuant to Section 112.18(1), Florida Statutes.

9. Penalties and interest: Penalties and interest pursuant to Section 440.20(6)-(8), Florida Statutes, or as otherwise provided by law/reasonable costs pursuant to Section 440.34, Florida Statutes, or as otherwise provided by law.

## **DEFENSES**

1. Claimant has not met the statutory requirement of 112.18 FS presumption.

2. No medical documentation to establish entitlement to indemnity benefits.

3. No medical documentation to support a disabling event. Work place is not the major contributing cause for any condition covered under presumption afforded a first responder in this claim.

4. Claimant does not meet the requirements for an advance.

5. No PICA due or owed.

## **EXHIBITS**

### Joint Exhibits

1. Petition for Benefits filed on November 10, 2015 (1)<sup>1</sup>
2. Response to Petition for Benefits filed on November 20, 2015 (4)
3. Uniform Pretrial Stipulation filed on March 23, 2016 (17)

### Claimant Exhibits

1. Pre-Employment Physical filed on June 16, 2016 (29)
2. Deposition of Dr. Steven Borzak (with attachments) filed on June 16, 2016 (27)

### E/C Exhibits

None

## **WITNESSES**

### Claimant

Nidia Padilla

### Employer/Carrier

None

## **FINDINGS OF FACT**

1. The stipulations of the parties are accepted and adopted.
2. Claimant began working for the Florida Department of Corrections as a correctional officer in 2007. She passed a pre-employment physical that showed no evidence of hypertension. She was diagnosed with hypertension in 2014 by Dr. Luis Morales, who prescribed losartan (25 mg twice daily) for her condition. On January 28, 2015, Claimant's blood pressure was 142/90. On March 2, 2015, it was 140/60. On May 6, 2015, it was 154/84.
3. On October 25, 2015, Claimant saw Dr. Bruce Weaver at Centra Care (an urgent care clinic), complaining of moderate lightheadedness. Dr. Weaver noted Claimant's blood pressure

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<sup>1</sup> Numbers in parentheses refer to the OJCC docket number.

reading on that day was 139/69, and stated Claimant had an “elevated b/p for her.” He recommended an extra dose of losartan and advised Claimant to follow-up with her regular physician in one to two days. He also wrote a letter stating Claimant should not return to work until October 27, 2015, due to hypertension. As a result, Claimant missed two shifts.

4. Claimant obtained an IME with Dr. Steven Borzak. Dr. Borzak issued a report concluding Claimant has “essential hypertension (hypertensive cardiovascular disease). The cause is unknown. Possible contributory factors include obesity, NSAIDS and work stress.” In his report, he also stated Claimant was “apparently disabled due to hypertension from 10/25/15-10/27/15.”

5. Dr. Borzak also testified by deposition. On cross-examination, he conceded a blood pressure reading of 139/63<sup>2</sup> was not by itself a cause of disability due to hypertension. He explained, however:

Q. Doctor, isn't it true that had you seen her on 10/25 and her blood pressure reading was 139 over 63, you would see no reason to keep her off work or would, in fact, determine that she has a disabling event from hypertension; is that correct?

A. I wouldn't agree with your statement, Ms. Hendon, because I would have made multiple blood pressure readings and tried to establish a cause for her symptoms. I don't know what went on before or after the single blood pressure recording, but again by inference there had to be some basis other than this single blood pressure reading in my opinion for Dr. Weaver to state that she was impaired due to hypertension, so I don't know what I would have said at the time since I wasn't there.

### **CONCLUSIONS OF LAW**

1. The key question is whether Claimant’s hypertension is presumed compensable under section 112.18(1)(a), Florida Statutes (2015). To be entitled to the presumption, Claimant must prove (1) she is a member of a protected class, (2) she suffers from one of the conditions within

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<sup>2</sup> Dr. Borzak’s IME report states Claimant’s blood pressure reading was 139/63 on October 25, 2015. Dr. Weaver’s records indicate the reading was actually 139/69. Neither party has mentioned this apparent error.

the scope of the presumption, (3) a pre-employment physical did not show evidence of the condition, and (4) the condition resulted in disability or death.

2. As a correctional officer within the meaning of section 943.10(2), Florida Statutes (2015), Claimant is a member of a protected class. Likewise, the pre-employment physical did not reveal evidence of hypertension. The two remaining questions are whether Claimant's condition is within the scope of the presumption and whether the condition resulted in disability.

*Is Claimant's Condition within the Scope of the Presumption?*

3. Dr. Borzak testified that Claimant, like 95 percent of all people with hypertension, has essential hypertension. He testified further that this simply means the cause of the condition is unknown. The E/C has presented no evidence to the contrary, but relies on Bivens v. City of Lakeland, 993 So. 2d 1100, 1102 (Fla. 1st DCA 2008), case dismissed, 14 So. 3d 241 (Fla. 2009), to argue that essential hypertension is not within the scope of the presumption. I reject this argument. The court explained in Williams v. City of Orlando, 89 So. 3d 302 (Fla. 1st DCA 2012), that Bivens is limited to cases where a claimant produces no evidence that the essential hypertension is arterial or cardiovascular. Here, Dr. Borzak stated in his report that he diagnosed Claimant with "essential hypertension (hypertensive *cardiovascular* disease)." (emphasis added). Dr. Borzak's report is therefore sufficient evidence that Claimant's hypertension is cardiovascular, a condition within the scope of the presumption.

*Did the Condition Result in Disability?*

4. The E/C next argues Claimant failed to prove disability as a result of hypertension. The evidence is unrefuted that on October 25, 2015, Dr. Weaver took Claimant off work until October 27, 2015 "due to hypertension." But the E/C contends there is no admissible evidence she was disabled due to hypertension because her blood pressure reading when she saw

Dr. Weaver on October 25, 2015, was 139/63,<sup>3</sup> a reading not high enough in isolation to qualify as hypertension, according to Dr. Borzak. I reject this argument.

5. In addition to Dr. Borzak's current diagnosis of hypertension, both Dr. Morales and Dr. Weaver diagnosed Claimant with hypertension. On October 25, 2016, Dr. Weaver found Claimant had "elevated b/p for her." Under section 440.13(5)(3), Florida Statutes (2015), the *opinions* of Dr. Morales and Dr. Weaver are not admissible because they were not authorized treating physicians, IMEs, or EMAs. But case law holds the fact that a doctor made a particular diagnosis is not an opinion. Arlotta v. City of W. Palm Beach, 82 So. 3d 1221, 1223 (Fla. 1st DCA 2012); Office Depot, Inc. v. Sweikata, 737 So. 2d 1189, 1191 (Fla. 1st DCA 1999). Dr. Borzak testified he relied on all the medical records, including Dr. Weaver's diagnosis, in rendering his own opinions. He also noted Claimant had been diagnosed with hypertension by Dr. Morales, who had prescribed losartan for that condition well before Claimant was taken out of work by Dr. Weaver on October 25, 2015. And Dr. Borzak also took into account that Dr. Weaver instructed Claimant to take an extra dose of losartan when he took Claimant off work due to hypertension. Given this factual predicate, I conclude it is much more than mere speculation that Claimant was disabled as a result of hypertension when she was taken out of work on October 25, 2015. See Rocha v. City of Tampa, 100 So. 3d 138 (Fla. 1st DCA 2012).<sup>4</sup>

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<sup>3</sup> Because Dr. Weaver's records indicate the reading was actually 139/69, to the extent the E/C's argument is premised solely on whether a reading of 139/63 is high enough to indicate hypertension, it is not consistent with the actual blood pressure reading on that day.

<sup>4</sup> To support its position that there was no disability, the E/C cites in its trial memorandum two per curiam affirmances without published opinions: Shafer v. City Of Kissimmee, 942 So. 2d 887 (Fla. 1st DCA 2006), and Brascom v. Hillsborough County Sheriff's Office, 33 So. 3d 37 (Fla. 1st DCA 2010). I am puzzled by this because PCAs have no precedential value. Dep't of Legal Affairs v. Dist. Court of Appeal, 5th Dist., 434 So. 2d 310, 311 (Fla. 1983).

Because the presumption applies, and because the E/C has failed to offer any evidence to rebut the presumption, I conclude Claimant's hypertension is compensable.

*Is Claimant Entitled to Authorization of Care and Treatment with a Board-Certified Cardiologist?*

Although I conclude Claimant's hypertension is compensable, I decline to order the E/C to provide medical care and treatment "with a board-certified cardiologist," as sought by Claimant. Dr. Borzak testified only that Claimant will require office visits and medications to control her blood pressure. There is no testimony or other evidence that this treatment must be provided by a board-certified cardiologist. Of course, under section 440.13(2)(a), Florida Statutes (2015), the E/C has a continuing duty to furnish medically necessary care for Claimant's compensable hypertension.

*Is Claimant entitled to TTD or TPD Benefits?*

Claimant's counsel conceded at the final hearing that Claimant is not entitled to these benefits at this time because she only missed two days from work as a result of her compensable condition.

It is therefore,

**ORDERED AND ADJUDGED:**

1. Claimant's hypertension is compensable.
2. The claim for authorization and treatment with a board-certified cardiologist is denied.
3. The claims for TTD or TPD benefits from October 25, 2015, and continuing are denied.
4. Because no indemnity benefits are awarded, penalties and interest are not due.
5. Jurisdiction is reserved as to attorney's fees and costs.

**DONE AND ELECTRONICALLY TRANSMITTED VIA EMAIL TO THE ATTORNEYS AND CARRIER LISTED BELOW** this 23<sup>rd</sup> day of June, 2016, in Daytona Beach, Volusia County, Florida.



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