

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

Jerry Wood,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 07-003486WJC
)	
Osceola County Sheriff's Office,)	Accident date: 8/22/2006
)	
Employer,)	
)	
and)	
)	
Unisource Administrators, Inc.,)	
)	
Carrier/Service Agent.)	
_____)	

FINAL COMPENSATION ORDER

After proper notice to all parties, a hearing was held and concluded on this claim in Orlando, Orange County, Florida on the morning of Wednesday, August 13, 2008. Present at the hearing was the claimant, Jerry Wood, and his attorney, Paul A. Kelley. The employer/carrier, hereinafter referred to as the E/C, was represented by Attorney Rex A. Hurley. In court testimony was received from the claimant. Also in attendance at the hearing was the claimant's wife, Kathy Wood, and employer representative, Linda Penny.

This order addresses the Petition for Benefits dated 1/28/08 and filed with DOAH on 2/6/07.

The claimant, a 44-year old road patrol deputy sheriff, maintains he developed hypertension and heart disease in the course and scope of his employment as a law enforcement officer. He pursues a finding of compensability of his claim under the Florida Heart and Lung Bill.

The issues to be determined were as follows:

1. Whether the claimant is entitled to a finding of compensability of his hypertension and coronary artery disease?
2. Whether the claimant is entitled to treatment with a board certified cardiologist for the treatment of his hypertension and coronary artery disease?
3. Whether the claimant is entitled to the payment of his reasonable attorney fees and costs at the expense of the E/C?

The E/C defended the claim on the following grounds:

1. That the claim is not compensable.
2. That the Section 112.18 presumption does not apply.
3. That in the alternative the presumption has been rebutted.
4. That no injury was sustained in the course and scope of employment.
5. That the claimant has not proven occupational disease.
6. That any continuing need for indemnity or medical benefits are not due to an industrial accident.
7. That the claimant's coronary artery disease is not compensable or causally related.
8. That the claimant's hypertension is not compensable or causally related.
9. That claimant has no disability.
10. That the employment is not the major contributing cause of any disability or need for treatment.

11. That any temporary aggravation has resolved.
12. That no costs or attorney fees are due.

STIPULATIONS OF THE PARTIES

1. That the Judge of Compensation Claims has jurisdiction over the parties and the subject matter.
2. That venue properly lies in Osceola County.
3. That there was an employer/employee relationship at the time of the alleged 8/22/06 accident.
4. That worker's compensation insurance coverage was in effect on the date of the alleged accident.
5. That there was timely notice of the pretrial conference and the final hearing.
6. That the claimant's average weekly wage is \$1,195.89 which is inclusive of the applicable fringe benefits that are continuing. In the event the claim is found compensable the parties agree to handle any indemnity benefits payable as a result of the stipulated AWW administratively.

JUDGE'S EXHIBITS

1. The pre-trial stipulation and pre-trial compliance questionnaire approved by the undersigned in its order of 7/31/07.
2. A composite exhibit consisting of the claimant's trial memorandum prepared on 4/30/08 and the E/C amended hearing information sheet dated 8/08/08 with attached case opinions. The composite items were considered for argument purposes only.

JOINT EXHIBITS

None.

CLAIMANT'S EXHIBITS

1. The 3/04/08 deposition transcript of senior claims representative, Sarah Gibbens, and attachments.
2. The 1/21/08 deposition transcript of Dr. Patrick Mathias and attachments.

E/C EXHIBITS

1. The 1/16/08 deposition transcript of Dr. Sunil Kakkar and attachments.
2. The 9/19/07 deposition transcript of Dr. Michael A. Nocero, Jr. and attachments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the evidence presented. I have observed and assessed the candor and demeanor of the witness that testified live before me, and I have resolved all of the conflicts in the live testimony, deposition testimony and documentary evidence. Although I may not have commented on or summated each and every piece of evidence that was admitted it does not mean that I have not carefully considered it. I have not interpreted the facts in this case liberally in favor of either the rights of the injured worker or the rights of the employer. Furthermore, the law has been construed in accordance with the basic principles of statutory construction. Based on the foregoing, the evidence, and applicable law, I make the following determinations:

1. I find that I have jurisdiction over the parties and the subject matter.
2. I find from the available record and from the parties' stipulation that Mr. Wood has been an employee of the Osceola County Sherriff's office since October 2, 1989 where he currently works as a road patrol officer. His past assignments included work on the S.W.A.T. team, with the Bike unit, the tourist crime unit, as a property detective for the criminal investigation division, and as a training coordinator. As such, I find that he is a member of the protected class of law enforcement officers under the Florida Heart and Lung Bill.
3. I find that prior to his employment with the Osceola County Sherriff's Office Mr. Wood underwent a pre-employment physical on August 24, 1989. That physical failed to reveal any evidence of hypertension or heart disease. This finding is supported by the at trial testimony of Mr. Wood, the 9/19/07 deposition testimony of Dr. Nocero at page 49, and the 3/04/08 deposition testimony of senior claims representative, Sarah Gibbens, at page 15.
4. It is unrefuted that Mr. Wood was diagnosed with hypertension and coronary artery disease while in the employ of the Osceola County Sherriff's Office. Both diseases are covered diseases under the Heart and Lung Bill. I further accept Mr. Wood's testimony that his various duties with the Sherriff's Office involved a significant amount of psychosocial stress.
5. The record also supports the conclusion that Mr. Wood sustained a period of disability as a result of his coronary artery disease for a period of approximately three weeks following a heart catheterization procedure that included stenting. This period of disability is supported by the at trial testimony of Mr. Wood, the 1/21/08 deposition testimony of Dr. Mathias at page 12, the 1/16/08 deposition testimony of Dr. Kakkar at page 16, the 9/19/07 deposition testimony of Dr. Nocero at page 47 and the 3/04/08 deposition testimony of Sarah Gibbens at page 14.
6. Although I find Mr. Wood sustained a period of disability with respect to his coronary artery disease, I do not so find with respect to his hypertension. This latter conclusion is supported by the deposition testimony of Dr. Matthias at page 13; Dr. Kakkar at page 16; and Dr. Nocero at pages 11, 51-53. Counsel for the employee somewhat concedes that there

was no disability based on the hypertension alone at position 50:42 of the recorded trial proceedings.

7. I also accept Sarah Gibben's deposition testimony at page 25 that she did not accept Mr. Wood's hypertension as a compensable claim.
8. In light of the above, I find that Mr. Wood is entitled to the Section 112.18 presumption with respect to his coronary artery disease (CAD), but not with respect to his hypertension. Although he meets the necessary elements for the presumption concerning the CAD, he falls short with respect to the hypertension claim because of the disability requirement.
9. Notwithstanding this disability deficiency, however, the medical evidence supports the conclusion that should the CAD be found compensable, the hypertension will have to be treated in order to satisfactorily treat the coronary artery disease. This necessary treatment of the hypertension is confirmed by medical deposition testimony of Dr. Matthias at page 13-14; Dr. Kakkar at page 25 and Dr. Nocero at page 45.
10. With respect to this hindrance theory of recovery, the E/C argues that the medical testimony presented at trial is still deficient because the injured worker would be required to establish that the major contributing cause of the need for the hypertensive treatment would be the CAD. I accept the claimant's argument as to the availability and applicability of the hindrance theory on these facts over the arguments of the E/C. I find nothing from statutory or case law to persuade me that the hindrance theory is no longer a basis for the authorization of appropriate and medically necessary care and treatment, notwithstanding the new major contributing cause standard for the finding of a compensable claim. I again accept the uncontroverted testimony of the medical providers that the Mr. Wood's essential hypertension must be treated and regulated in order to properly treat his coronary artery disease. Such treatment should be the responsibility of the E/C in the event the CAD is determined compensable. This position is further supportable because there is no clearly demonstrable evidence of pre-existing, non-occupationally related hypertension.
11. In short, I find the primary issue on this claim is whether the E/C has satisfactorily rebutted the presumption that Mr. Wood's coronary artery disease is a compensable claim sustained

within the course and scope of his employment.

12. It is evident that the legislature in passing the Florida Heart and Lung Bill felt there were special hazards and stresses experienced by first responders such as Mr. Woods that should entitle them to a presumption of compensability with respect to certain designated ailments such as hypertension and heart disease. The legislature had already determined that stress common to these jobs make the employees of such more prone to acquire these ailments. The presumption makes it unnecessary for the employee to initially prove such a causal relationship between the disease and the job provided the condition precedents of the statute are met as Mr. Wood has done here with respect to his CAD.
13. With Mr. Wood afforded the presumption with respect to his CAD the burden shifts to the E/C to overcome it with competent evidence unless there is medical evidence to support the presumption. In the latter scenario, by the parties' own acknowledgement, the presumption can then only be overcome by clear and convincing evidence.
14. From this record I find that Mr. Wood has shown an occupational factor in the development of his CAD to wit job stress as contributing to or aggravating the coronary artery disease as testified to by Dr. Mathias at page 23 of his deposition. I find no inconsistency in reaching this conclusion in light of the doctor's testimony that although there is no known specific cause, psychosocial stress is an associated risk factor associated with the development of both diseases (coronary artery disease and essential hypertension) according to multiple research papers. This also appears to be consistent with the legislature's determination to create the presumption for these first responders.
15. To the extent one risk factor can be singled out in an individual patient over another, I accept Dr. Mathias' opinion as being more persuasive to the extent there is inconsistency between his opinion and those of doctors Kakkar and Nocero. Furthermore, Dr. Kakkar acknowledged on cross-examination that he could not point to a specific cause for Mr. Wood's coronary artery disease (Dr. Kakkar's deposition at page 26). In fact he thought it was due to a combination of factors to include hypertension, hyperlipidemia, family history and questionable diabetes mellitus (Dr. Kakkar's deposition at page 15). Dr. Kakkar also

mentioned smoking as a risk factor (Id at page 21) but I find from the record testimony that Mr. Wood did not smoke and that he was never diagnosed with or treated for diabetes. The non-existence of diabetes is also corroborated by the deposition testimony of Dr. Nocero at page 32.

16. In response to a question about the cause of Mr. Wood's hypertension, Dr. Kakkar also testified that it was a cumulative factor (Id at page 26). It is interesting that he maintains that stress from the employment was not the major contributing cause of the CAD or hypertension but he does not even acknowledge that it could be a contributing factor among the constellation of factors that he described as cumulative.
17. I find that at a minimum stress was a contributing factor and this is supported by the testimony of Dr. Matthias and Dr. Nocero who acknowledged that he could not rule it out as such (Dr. Nocero's deposition at pages 42-43). Dr. Nocero alleges that job stress is not a major factor yet he provides no medical basis for the opinion. Furthermore, although he testified that he was not aware of any studies that indicate deputy sheriffs get hypertension or coronary artery disease at a higher rate than non-deputy sheriff's, his opinion still flies in the face of the legislative determination that the presumption should be afforded to these types of employees.
18. Dr. Nocero opines that the major contributing cause of Mr. Wood's development of coronary artery disease is primarily his essential hypertension and secondarily elevated cholesterol levels (Dr. Nocero deposition at page 33). Yet he also agrees that essential hypertension has no known cause and therefore he could not state what the major contributing cause of the hypertension was (Id). Although he believes Mr. Wood's essential hypertension predated his coronary artery disease it is evident that essential hypertension is one of the diseases for which the presumption may apply and that Mr. Wood's did not acquire his essential hypertension until after he was employed as a law enforcement officer (see also Dr. Nocero's deposition at page 49). As such, although no disability was involved, one could not rule out that his essential hypertension was caused by his employment. These facts make it even more difficult to argue that if the coronary artery disease was caused by

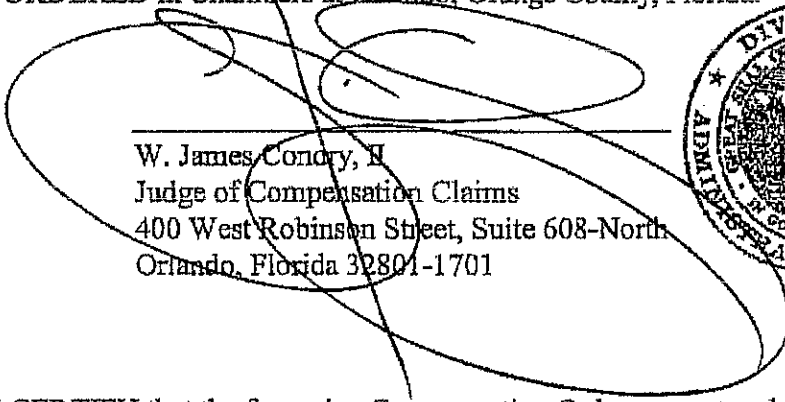
- the essential hypertension that it was due to a non-occupational cause.
19. From the totality of the record before me, having found Mr. Wood presented sufficient evidence of an occupational factor in support of the presumption for his coronary artery disease, I find the E/C has not satisfactory rebutted same either by clear and convincing or by competent evidence. I do not find any of the physicians attributing Mr. Wood's hyperlipidemia as the major contributing cause of his coronary artery disease. At best the hyperlipidemia is a contributing factor secondary to Mr. Wood's essential hypertension (Dr. Nocero deposition at page 33). It is factor no different than the other contributory factors discussed. Additionally, the essential hypertension was not standing alone deemed the major contributing cause of the coronary artery disease. However even if such testimony existed in the record it would be questionable because Mr. Wood's essential hypertension was acquired after his employment as a law enforcement officer raising a specter as to whether it too was caused by his employment. Dr. Nocero acknowledged that he did not know the cause of Mr. Wood's hypertension.
20. In the alternative, even if the standard of proof for overcoming the presumption of compensability is competent evidence, I am not convinced that Mr. Wood's coronary artery disease was specifically caused by a non-work related factor. For the foregoing reasons *I find his claim for the compensability of his coronary artery disease meritorious and unsuccessfully rebutted.*
21. Finding the coronary artery disease compensable I reject the E/C argument that Mr. Wood only had a temporary aggravation of his CAD and that no further care for same is required. Their argument over looks the fact that there was no evidence of pre-existing coronary artery disease that was aggravated by his employ. Moreover, the consensus of the medical testimony is that Mr. Wood will require continuous monitoring by a cardiologist with treatment in the form of diagnostic blood work and medication to properly treat his CAD. The fact that Mr. Wood feels much better since his accident does not otherwise negate the fact that he has sustained a permanent injury and impairment that requires ongoing treatment. The medical evidence conflicts with any conclusion that Mr. Wood's medical

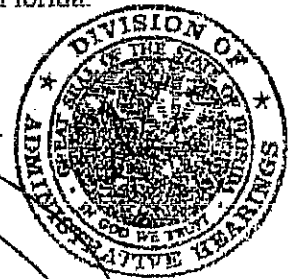
condition and need for treatment was temporary even though his period of disability may have been. The doctors to a man acknowledge that Mr. Wood requires ongoing treatment.

WHEREFORE it is hereby ORDERED and ADJUDGED that:

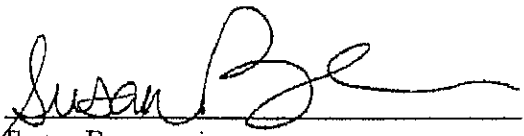
1. The request for the finding of compensability of the claimant's coronary artery disease is granted.
2. The request for the authorization of a board certified cardiologist for the treatment of the claimant's coronary artery disease is granted.
3. The request for the authorization of treatment for the claimant's essential hypertension is granted.
4. The request for the payment of the claimant's reasonable attorney fees and costs at the expense of the E/C is granted. Jurisdiction is reserved to determine the amount of said fees and costs in the event the parties are unable to amicably resolve them.
5. That all benefits ripe at the time of trial and not otherwise reserved by the parties or order of this court are waived.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida.


W. James Conroy, II
Judge of Compensation Claims
400 West Robinson Street, Suite 608-North
Orlando, Florida 32801-1701



I HEREBY CERTIFY that the foregoing Compensation Order was entered and a true and accurate copy has been furnished by U.S. mail delivery this 12th day of September 2008, to the following:


Susan Berman
Assistant to Judge of Compensation Claims

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