

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

Samantha Folsom,	)	
Employee/Claimant,	)	
	)	
vs.	)	
	)	OJCC Case No. 09-002351 MRH
Marion County Sheriff's	)	Accident date: 8/14/2007
Department/USIS,	)	Judge: Marjorie Renee Hill
Employer/ Carrier/Servicing Agent.	)	
	)	

**FINAL COMPENSATION ORDER**

The final hearing in this case occurred on December 3, 2009. The hearing and this Final Compensation Order resolve the Petition for Benefits filed January 27, 2009. This court reserves jurisdiction to address the claims contained in the Petition for Benefits filed September 15, 2009.

**A. Pre-Trial Motions and Proceedings:**

1. At trial and during the deposition of Claimant's IME, Dr. Mathias, the E/C moved to strike Dr. Mathias' opinion testimony. During the deposition, the E/C stated "once we have an opportunity to go through the records that Dr. Mathias may have reviewed, if there are records in there that have not been authenticated, are not of an EMA, an IME or an authorized treating physician, we would object to their admissibility." The E/C then asked Dr. Mathias if he relied on all of the records he reviewed. When he answered "yes," the E/C moved to strike his opinions asserting his opinions were based on his review of medical records that were not stipulated into evidence, were not authenticated, constitute hearsay, and are not admissible. At the time the E/C moved to strike Dr. Mathias' opinions, the E/C did not know if the records Dr. Mathias had reviewed were improper.

Significantly, at trial, the parties stipulated to the admission of medical records of specific unauthorized treating physicians. Many of those records stipulated into evidence were those considered by Dr. Mathias. Moreover, many of the records of unauthorized treating physicians reviewed by Dr. Mathias, which were not stipulated into evidence, were also reviewed by Dr. Talit, the E/C's IME. Because it is unclear which medical records the E/C objects to, in light of the parties' subsequent stipulation permitting the introduction of various medical records from unauthorized physicians, the motion to strike Dr. Mathias' opinion testimony is **DENIED**.

2. Claimant objected to the admission of Dr. Bazo's letter date stamped January 25, 2008. Dr. Bazo is an authorized treating physician and the letter expresses his opinion based on his review of Claimant's medical records. Accordingly, the letter is admissible. See § 440.13(5)(e), Fla. Stat.

**B. Stipulations:**

The parties stipulated to the following:

1. An employer/employee relationship existed on the date of the accident.
2. Workers' compensation insurance was in effect on the date of the accident.
3. Medical and indemnity benefits will be handled administratively if compensable.
4. The employer was aware Claimant fainted at work on or about August 14, 2007.
5. Claimant successfully passed her Pre-Employment Physical on March 21, 2006.

**C. Claims:**

1. Compensability
2. TTD/TPD from August 14, 2007 to present and continuing
3. Authorization of physician to evaluate and treat for residual injuries caused by the industrial accident.
4. Penalties, interest, costs and attorney's fees.
5. Attorney's fees if E/C does not prevail on fraud defense.

**D. Defenses:**

1. Claimant did not sustain a work-related compensable injury.
2. The accident is not the major contributing cause of injuries or need for treatment.
3. The section 112.18, Florida Statutes presumption is inapplicable.
4. The condition is congenital/pre-existing and unrelated to employment.

**E. Joint Exhibits**

1. Pre-trial Stipulation, and all amendments and attachments thereto.
2. "Joint Stipulation of the Parties" filed December 3, 2009.

---

3. The timesheets from August 4, 2007 through July 7, 2008.
4. Records of unauthorized providers from the Employee Health Clinic (stamped Clinic 56-58, 64-68, 70-92 and 95-96).
5. Marion County Clinic Post-Conditional Job Offer Medical Review (stamped Clinic 6-9).
6. ECG of March 21, 2006 (stamped PF 85).
7. Post Offer Physician Screening (stamped Clinic 16).
8. Patient Information/FDLE Form (stamped Clinic 23).
9. FDLE Physician's Assessment dated March 15, 2006 (stamped Clinic 1a).
10. Sheriff Marion County Medical History Questionnaire (stamped PF 58-61).
11. FDLE Physician's Assessment dated March 21, 2006 (stamped Clinic PF 91).
12. Employment Confirmation (stamped PF 69-72).
13. Affidavit of Separation (stamped PF 2).
14. December 29, 2008 letter from Linda M. Bonura, Human Resources Technician with the Sheriff of Marion County to CFCC.
15. Employee Detail Payroll Register Range from May 15, 2007 to April 30, 2009, consisting of 14 pages.

**F. Claimant Exhibits**

1. Deposition of Dr. Mathias taken November 24, 2009
2. Claimant's Personnel Records

**G. Employer/Carrier Exhibits**

1. Deposition of Samantha Folsom taken April 17, 2009
2. Deposition of Barbara Barone taken April 29, 2009
3. Deposition of Dr. Talit taken November 18, 2009
4. Deposition of Debra Kathleen Folsom, Claimant's Mother, taken July 20, 2009
5. Medical Note from Dr. Bazo date stamped January 25, 2008
6. Medical Records from Marion County Employee's Health Clinic
7. Medical Note from Dr. Bazo of February 4, 2008
8. Medical Records Release Request Forms from Dr. Kolaventy, ORMC, Dr. Patel, and Dr. Rieders to Marion County Employee Health Clinic, all dated 12/13/07
9. Three Return to Work Orders dated August 15, 2007 through October 25, 2007
10. Medical Records from Dr. Rucinski, ORMC dated August 14, 2007

**H. Court Exhibits**

1. Trial Memorandum – Claimant (Argument only)
2. Trial Memorandum – Employer/Carrier (Argument only)
3. Pre-trial Stipulation

**H. Live Testimony: Claimant, Samantha Folsom**

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

I have not written a detailed summary of all facts and evidence presented. *See* § 440.25(4)(e), Fla. Stat.; *Garcia v. Fence Masters, Inc.*, 16 So. 3d 200 (Fla. 1<sup>st</sup> DCA 2009) (noting compensation order need only contain findings of ultimate material fact necessary to support the mandate, and need not contain a recitation of all of the evidence presented).

---

However, I carefully considered all of the evidence before me in making my findings of fact and conclusions of law. I evaluated the live testimony of the witness and carefully observed her conduct and demeanor. I read the depositions and fully considered all of the exhibits. I have weighed the evidence, resolved all conflicts where they existed, and rejected all evidence and inferences inconsistent with my findings. Upon full consideration of the parties' stipulations and all of the evidence before me, I make the following factual findings:

**FINDINGS OF FACT**

1. Claimant is 23 years old. She was hired by the Marion County Sheriff's office in the spring of 2006. (Claimant trial testimony).
2. Prior to beginning her employment with the Marion County Sheriff's office, Claimant successfully passed her pre-employment physical, which revealed no evidence of heart disease. (Parties' stipulation; JT5 (Clinic 6-9); JT7 (Clinic 16); JT8 (Clinic 23); Mathias depo. p. 11; Talit depo. p. 11).
3. Prior to the incident at issue, Claimant was working the night shift (6:00 p.m. to 6:00 a.m.). While at work the night before the incident, she was under intense stress. (Claimant trial testimony; Claimant depo. p. 28).

4. On August 14, 2007, Claimant awakened at about 4:00 p.m. to begin her shift. She felt dizzy and nauseated. (Claimant trial testimony; Claimant depo. p. 23).
  5. She went to work and en route, was directed by dispatch to the emergency room at ORMC to relieve another deputy watching a Baker Act patient. When she arrived, she again felt dizzy and nauseated. She was approached by an EMT who said she looked pale and wanted to take her blood sugar reading. That's the last thing Claimant remembered. (Claimant trial testimony; Claimant depo. p. 24).
  6. Claimant received care and treatment at ORMC which is where she was when the incident occurred. (Claimant trial testimony; JT 4 (Clinic 68)).
  7. Claimant had "two episodes of frank syncope," both "occurring the day after a very stressful night." (Mathias IME report).
  8. Claimant described her two work-related syncopal incidents to her doctors as feeling as though she was sinking in an elevator. (Claimant trial testimony). Prior to those two incidents, Claimant had never felt dizzy or nauseated except twice from suspected food poisoning. (Claimant depo. pp. 26, 41).
  9. After the two work-related syncope events, Claimant continued to "pass out" two to five times per week. (Claimant depo. p. 35).
  10. Tilt testing is designed to generate vagal stimulation or see if there is a drop of blood pressure upon standing. (Talit depo. p. 18).
- 
11. On December 6, 2007, Claimant had a "tilt test" which was positive for neurocardiogenic syncope. (JT4 (Clinic 96); Mathias IME report).
  12. Claimant's "tilt test" showed both a drop in blood pressure and bradycardia (slowing heart rate). (Talit IME report; Talit depo. p. 19).
  13. Claimant had "vasovagal or syncope or near syncopal episodes." Her "blood pressure drops when she has the vagal episodes, which is part of the syndrome." (Talit IME report; Talit depo. p. 19).
  14. Dr. Bazo reviewed Claimant's medical records, diagnosed neurovascular syncope, and opined the condition was not work-related. (Barone depo. pp. 5-6, 9; Bazo letter stamped 1/25/08; Bazo letter dated 2/4/08).
  15. Dr. Mathias and Dr. Talit diagnosed neurocardiogenic or vasovagal syncope. (JT4 (Clinic 88, 96); E/C 6; Mathias depo. p.12-13, 32; Talit depo. p.14-15).
  16. Neurocardiogenic syncope and vasovagal syncope are the same thing. (Mathias depo. p. 12-13, 32; Talit depo. p. 14-15).

17. Vasovagal syncope originates with vagal nerves, which are part of the "loop" that starts in the right ventricle. (Mathias depo. p. 38-39, 41).
  18. Syncope is an interruption of brain activity usually caused by interruption of blood supply to the brain. Neurocardiogenic syncope is caused by an "arrhythmia, a precipitous drop in blood pressure or heart rate." (Mathias depo. pp. 12-13).
  19. Neurocardiogenic syncope is a cardiovascular condition treated by cardiologists. (Mathias depo. p. 12). Dr. Talit, a cardiologist, frequently treats patients with neurocardiogenic syncope. (Talit depo. p. 41).
  20. Neurocardiogenic syncope causes a person to pass out because of faulty communication between the heart, the nerves supplying the heart, and the nerves supplying the peripheral vasculature. In response to certain stimuli, a person's heart rate and/or blood pressure drops precipitously, and they pass out. (Mathias depo. pp. 13-14).
  21. Neurocardiogenic syncope requires treatment by cardiac medications or pacemaker therapy. (Mathias depo. p. 14).
  22. A pacemaker prevents a person with neurocardiogenic syncope from passing out from a very low heart rate. The pacemaker replaces a function of the heart by preventing the heart from going too slow. (Mathias depo. p. 15). The pacemaker "kicks in" when the heart slows down below a certain rate. (Talit depo. p. 58-59).
- 
23. On February 25, 2008, Claimant underwent surgery for pacemaker insertion. On March 30, 2008, Claimant underwent surgery for lead revisions. On April 17, 2008, Claimant underwent surgery for revision of the pacemaker due to a suspected dislodged lead. (Mathias IME Report, p.2; Claimant depo. p. 36).
  24. The pacemaker and subsequent revision were reasonable and medically necessary for Claimant's condition. (Mathias depo. p. 27). Dr. Talit agreed "100 percent" with the other doctors' diagnosis, assessment and treatment. (Talit depo. p. 42).
  25. Even with the pacemaker, Claimant still had mild syncopal episodes, because the pacemaker does not resolve her blood pressure. (Mathias depo. p. 42).
  26. On August 18, 2009, Claimant had an IME with Dr. Mathias, a cardiologist. (Mathias IME report). Claimant had normal pacemaker activity, which meant her heartbeat was being run by the pacemaker, not on its own. (Mathias depo. p. 32).
  27. Claimant's heart is structurally normal, but reacts abnormally to stimulation. (Talit depo. p. 11).
  28. Neurocardiogenic syncope is a functional abnormality of the heart and is heart disease. (Mathias depo. pp. 15-16).

29. Shortly before her syncopal episodes began, Claimant changed from day shift to night shift. (Mathias depo. pp. 17-20). Claimant's stress included stressful nights on the job, and adjusting to shift work. (Mathias depo. p. 36).
30. Claimant's job stress caused or aggravated her neurocardiogenic syncope. Within a reasonable degree of medical certainty Claimant's job stress was the major contributing cause of her neurocardiogenic syncope. (Mathias depo. pp. 22-23).
31. Claimant reached MMI on August 18, 2009 with a 45% PIR. (Mathias depo. p. 27).
32. An ORMC medical history form dated 8/14/07 indicates Claimant "Wore Halter Monitor years ago." (E/C 10). A consultation report dated August 15, 2007 indicates Claimant gave a "remote history of arrhythmia for which she has had telemetry monitoring while in New York." (JT4 (Clinic 66)).
33. Claimant wore a halter monitor one day when she was 7 years old when her mother requested one after feeling her pulse. (Claimant trial testimony).
34. Claimant did not complain of dizziness or lightheadedness as a child, and did not have any fainting episodes as a child. (Debra Folsom depo. p. 6).
35. Claimant had no problems with high blood pressure as a child, and no heart problems as a child. (Debra Folsom depo. p. 7).
36. Claimant did not exhibit sweating or any other symptoms when she experienced stress as a child. (Debra Folsom depo. p. 8).

---

37. Claimant was not diagnosed with neurocardiogenic syncope as a child. (Debra Folsom depo. p. 9).
38. Between August 14 and August 16, 2007, Claimant was in the hospital because she passed out. It was reasonable for Claimant to be out of work those three days. Within a reasonable degree of medical certainty Claimant was incapacitated from work during the time she was hospitalized. (Mathias depo. pp. 23-24).
39. On August 16, 2007, Claimant was released to return to work following her hospitalization of August 14, 2007. (E/C 9).
40. Claimant was also hospitalized in October, 2007 and underwent a heart catheterization on October 25, 2007. (Claimant trial testimony). It was reasonable for Claimant to be out of work from October 18, 2007 to October 29, 2007, and Claimant was incapacitated from working during that time. (Mathias depo. p. 24).
41. On October 19, 2007 and October 25, 2007, Claimant was given a return to work form from Dr. Patel and Dr. Rieders, respectively, both indicating she could return to work on October 29, 2007. (E/C 9).

42. It was reasonable for Claimant to be out of work when she was having her pacemaker insertion and pacemaker revisions. (Mathias depo. pp. 24-25).
  43. Claimant was on restricted duty from June 22, 2007 through July 26, 2007. (Claimant depo. p. 38).
  44. Claimant was on non-duty status from February 27, 2008 through March 6, 2008 due to her "occupationally related" "heart condition." (E/C 6, Marion County Employee Health Clinic Duty Status Form dated 2/7/08).
  45. Claimant cannot get within 2 feet of a police radio, or use a cell phone in her left hand, because either will disable her pacemaker. (Claimant trial testimony; Claimant depo. p. 18).
  46. Claimant is now unable to work as a Sheriff's officer because of the pacemaker and her neurocardiogenic syncope. (E/C 6, Marion County Employee Health Clinic Encounter Forms dated 1/15/08, and 2/7/08; Mathias depo. pp. 25-26).
  47. Because of her neurocardiogenic syncope, Claimant is limited to sedentary work sitting at a desk without much stress, and "not much capacity" to be hurt if she passes out and falls down. (Mathias depo. pp. 25-26, 43-44).
  48. If Claimant stands for a long period of time without moving, return blood flow "would be a concern." (Claimant depo. p. 63).
- 
49. Claimant's employment with the Marion County Sheriff's office ended August 22, 2008. (Claimant depo. p. 13; E/C 13 (PF-2)).
  50. Claimant has not worked for any kind of pay or barter since she last received a paycheck from the Marion County Sheriff's office. (Claimant depo. p. 14).

### CONCLUSIONS OF LAW

#### Fraud

To establish the "fraud" defense, the employer/carrier must prove by a preponderance of the evidence that Claimant knowingly or intentionally engaged in one of the acts provided in section 440.105, Florida Statutes, for the purpose of securing workers' compensation benefits. See § 440.09(4)(a), Fla. Stat. (2007); § 440.105, Fla. Stat. (2007); *Matrix Employee Leasing v. Hernandez*, 975 So. 2d 1217 (Fla. 1<sup>st</sup> DCA 2008); *Village of N. Palm Beach v. McKale*, 911 So. 2d 1282, 1283 (Fla. 1<sup>st</sup> DCA 2005); *Pavilion Apts. v. Wetherington*, 943 So. 2d 226, 228 (Fla. 1<sup>st</sup> DCA 2006). Significantly, it is not necessary that a false, fraudulent, or misleading statement be material to the claim; it only must be made for the purpose of obtaining benefits. See *Village Apts. v. Hernandez*, 856 So. 2d 1140 (Fla. 1<sup>st</sup> DCA 2003); *McKale*, 911 So. 2d at 1283.

Workers' compensation benefits must be denied if statements of medical history, prior accidents, or the extent of current injuries are knowingly false, fraudulent, incomplete, or misleading. See *Village Apts.*, 856 So. 2d at 1141; see also *Lee v. Volusia County Sch. Bd.*, 890 So. 2d 397, 399 (Fla. 1st DCA 2004); *Citrus Pest Control v. Brown*, 913 So. 2d 754 (Fla. 1st DCA.2005). Regardless of whether a claimant is under oath, if at the time he makes any statements, he knows they are false, incomplete, or misleading, the statements fall within the scope of section 440.105(4)(b), Florida Statutes, and result in the loss of workers' compensation benefits. See *Village Apts.*, 856 So. 2d at 1142.

Here, the E/C asserts Claimant committed "fraud" by denying any cardiac disease, heart trouble, chest pain, and/or any complaints of dizziness, fainting, vertigo, syncope, etc., prior to her employment. The E/C asserts Claimant's medical records reveal that, on August 15, 2007, Claimant reported "a remote history of arrhythmia for which she has had telemetry monitoring while in New York," prior to her accident (see JT 4-Clinic 66), and an August 14, 2007, medical record from Dr. Rucinski indicates Claimant "wore a halter monitor 4 years ago" (see E/C 10).

4 years ago?

A review of Dr. Rucinski's medical record indicates to this court that the doctor noted "wore halter monitor years ago," not 4 years ago. Moreover, at trial, Claimant testified she wore the halter monitor for one day when she was a very young child in New York. This court found Claimant very credible, and accepts her testimony as true. Additionally, the E/C deposed Claimant's mother, who testified that, as a child, Claimant had no complaints of dizziness or lightheadedness, no fainting episodes, no problems with high blood pressure, or heart problems, did not exhibit sweating or any other symptoms when she experienced stress, and was not diagnosed with neurocardiogenic syncope. When considering Claimant's testimony, the two medical reports upon which the E/C relies for its fraud defense, and the testimony of Claimant's mother, this court finds no inconsistency. Accordingly, this court rejects any inference that Claimant provided a false, fraudulent, incomplete or misleading medical history to obtain workers' compensation benefits.

Fraud rejected

Applicability of the Section 112.18(1), Florida Statutes, Presumption

Section 112.18(1), Florida Statutes creates a rebuttable presumption of compensability for heart disease suffered by law enforcement officers who satisfy the statute's prerequisites. See *Carney v. Sarasota County Sheriff's Office and OPTA Comp*, 2009 Fla. App. LEXIS 19500, 3 (Fla. 1st DCA Dec. 15, 2009). To satisfy the statutory prerequisites, the law enforcement officer must have passed a pre-employment physical examination prior to entering into such service, which failed to reveal any evidence of such condition. See § 112.18(1), Fla. Stat.; *Miami-Dade County v. Davis*, 2009 Fla. App. LEXIS 17544, 1-2 (Fla. 1st DCA Nov. 24, 2009).

However, the presumption only relieves a claimant "from the necessity of proving an occupational causation." *Bivens v. City of Lakeland*, 993 So. 2d 1100, 1102 (Fla. 1st DCA 2008) (quoting *Caldwell v. Div. of Ret., Fla. Dep't of Admin.*, 372 So. 2d 438, 441 (Fla. 1979)). Here, it is uncontested that Claimant is a law enforcement officer who passed her pre-employment physical examination without any evidence of heart disease. Thus, she established entitlement to the presumption that, to the extent she has heart disease, it has an occupational causation.



### Rebutting the Presumption

Once the presumption has been established, it does not vanish upon the presentation of contrary evidence. *See Fuller v. Okaloosa Corr. Inst.*, 2009 Fla. App. LEXIS 17537, 5 (Fla. 1<sup>st</sup> DCA Nov. 24, 2009) (quoting *Punsky v. Clay County Sheriff's Office*, 18 So. 3d 577 (Fla. 1st DCA 2009) (en banc)). It remains with the claimant who establishes entitlement to the presumption and the presumption is itself sufficient to support an ultimate finding of industrial causation unless overcome by evidence of sufficient weight to satisfy the trier of fact that the heart disease had a non-industrial cause. *See id.* (citing *Punsky*, 18 So. 3d at 583). Evidence of non-industrial causation may rebut the presumption, not the mere existence of risk factors or conditions. *See id.* (citing *Punsky*, 18 So. 3d at 583).

In rebutting the presumption, the E/C must disprove occupational causation by medical evidence within a reasonable degree of medical certainty. *See id.* at 6. Where Claimant offers no evidence of occupational causation and relies exclusively on the statutory presumption, the E/C must produce competent, substantial evidence that convinces a Judge of Compensation Claims that the disease was caused by some non-work-related factor. *See id.* at 7; *Lentini v. City of W. Palm Beach*, 980 So. 2d 1232, 1233 (Fla. 1<sup>st</sup> DCA 2008).

Here, to rebut the presumption, the E/C relies on the two medical records indicating Claimant had previously worn a halter monitor, and Dr. Talit's testimony that Claimant had described feeling sensations similar to those which precipitated the instant accident, years ago in New York. However, Claimant's trial testimony was that she wore the halter monitor for one day when she was 7 years old. She had tried to describe her two work-related syncopal incidents to Dr. Talit, and described them as feeling as if she was sinking in an elevator. Claimant further testified she had never previously experienced the same symptoms she had prior to the instant accident. Again, this court accepts Claimant's testimony as truthful. The E/C has not provided evidence sufficient to convince this court that Claimant's neurocardiogenic syncope was caused by some non-work-related factor. Consequently, the E/C has not rebutted the presumption that Claimant's neurocardiogenic syncope had an occupational causation.

### Evidence of Heart Disease

However, because the presumption only relieves Claimant "from the necessity of proving an occupational causation," Claimant must still present evidence sufficient to convince this court that she has heart disease that caused disablement. *See Bivens*, 993 So. 2d at 1102 (citing *Caldwell*, 372 So. 2d at 441).

Neither party requested an EMA. *See e.g., Arvida River Hills Country Club & Zurich-Am. Ins. Grp. v. Van*, 728 So. 2d 1213 (Fla. 1<sup>st</sup> DCA 1999). Consequently, this court must resolve the conflicts between the opinions of Dr. Bazo, Dr. Talit and Dr. Mathias as to Claimant's diagnosis, and whether that diagnosis constitutes heart disease. *See Landmark Towers, LLC v. Ibarguen*, 954 So. 2d 43, 45 (Fla. 1<sup>st</sup> DCA 2007); *Chavarria v. Selugal Clothing, Inc.*, 840 So. 2d 1071 (Fla. 1<sup>st</sup> DCA 2003).

Dr. Bazo diagnosed Claimant with neurovascular syncope. The only evidence of that diagnosis is a two sentence letter, which bases the diagnosis on a review of Claimant's medical

records. A second, three sentence letter provides that, based on his review of Claimant's medical records, the condition is not work-related. Dr. Bazo's letterhead indicates he is in "Comprehensive Occupational Medical Practice." There is no evidence that Dr. Bazo examined Claimant. Other than the two letters, no records from Dr. Bazo were introduced into evidence, there is no indication as to what medical records he reviewed when reaching his opinion, and his deposition was not taken.

Conversely, Dr. Mathias and Dr. Talit are both cardiologists, both performed IMEs, both were deposed, and their IME reports and the medical records upon which they based their opinions were introduced into evidence. Both doctors diagnosed Claimant with neurocardiogenic syncope or vasovagal syncope, which both doctors testified were two names for the same condition. Additionally, the medical records from the Marion County Employee Health Clinic also provide a diagnosis of neurocardiogenic syncope. Because both Dr. Mathias and Dr. Talit are cardiologists who examined Claimant, this court accepts the diagnosis of Dr. Mathias and Dr. Talit, that Claimant had neurocardiogenic/vasovagal syncope, over that of Dr. Bazo.

The question then becomes whether neurocardiogenic syncope constitutes heart disease. As a whole, Dr. Mathias' opinions and explanations on this issue remained clear and internally consistent. Conversely, Dr. Talit's opinions on this issue appeared evasive and internally inconsistent. Consequently, to the extent the opinions of Dr. Mathias and Dr. Talit conflict on this issue, this court accepts Dr. Mathias' opinion that neurocardiogenic syncope constitutes heart disease.

Specifically, this court accepts Dr. Mathias' testimony that that the condition constitutes heart disease based on his testimony that the condition: is a functional abnormality of the heart; originates in the vagal nerves, which are part of the "loop" that originates in the right ventricle; is caused by an arrhythmia, a precipitous drop in blood pressure or heart rate; in response to certain stimuli, such as stress, causes a person's heart rate and/or blood pressure to drop precipitously, which causes the person to black out; and requires treatment by cardiac medications or "pacemaker therapy." These opinions were rendered within a reasonable degree of medical certainty. (Mathias depo. p.16). Accordingly, Claimant has established through medical evidence by a reasonable degree of medical certainty that neurocardiogenic syncope constitutes heart disease within the scope of section 112.18(1), Florida Statutes.

#### Evidence of Disability

Claimant must next establish disability. "Disability" is defined as "incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury." § 440.02(13), Fla. Stat. (2007). The First District Court of Appeal has interpreted section 440.02(13) to mean "disability only occurs when the employee becomes actually incapacitated, partially or totally, from performing his employment." *Carney*, 2009 Fla. App. LEXIS 19500, 3-4 (quoting *Bivens*, 993 So. 2d at 1103). Disability "hinges solely on the employee's ability to earn income, not upon other factors such as whether the employee has experienced wage-loss." *Id.* at 4 (quoting *Bivens*, 993 So. 2d at 1103). Disability may be temporary. *See id.* (citations omitted).

Diagnostic testing or treatment, standing alone, does not constitute "disability." *See id.* (citing *Bivens*, 993 So. 2d at 1103). Conversely, where hospitalization is required to treat a hazardous cardiac condition, such hospitalization does not constitute "testing or treatment standing alone." *See id.* at 4-5.

Here, the Marion County Employee Health Clinic Forms dated January 15, 2008 and February 7, 2008, and the testimony of Dr. Mathias establish that, because of her neurocardiogenic syncope, Claimant is unable to continue working as a Sheriff's officer. Moreover, Dr. Mathias testified it was reasonable for Claimant to be out of work from August 14, 2007 through August 16, 2007 and October 18, 2007 through October 29, 2007 due to hospitalizations and recovery from procedures resulting from her neurocardiogenic syncope, and during those hospitalizations for pacemaker insertion and revisions that took place on February 25, 2008, March 30, 2008 and April 17, 2008. During those times Claimant was incapacitated from performing her work. Additionally, a Marion County Employee Health Clinic Duty Status Form dated February 7, 2008 indicates Claimant was on non-duty status from February 27, 2008 through March 6, 2008 due to her "occupationally related" "heart condition."

Claimant was hospitalized to treat a hazardous cardiac condition. Her hospitalizations included cardiac catheterization, pacemaker insertion, and two surgeries for pacemaker revisions. Consequently, Claimant established she was "actually incapacitated, partially or totally, from performing [her] employment" as a result of her neurocardiogenic syncope. *See Carney*. Accordingly, Claimant has established disability. By establishing disability, Claimant established her neurocardiogenic syncope is compensable. Because her neurocardiogenic syncope is compensable, Claimant is entitled to medical treatment for that condition.

---

#### Temporary Total Disability Benefits

To be entitled to temporary total disability benefits, Claimant must establish a disability that is "total in character, but temporary." § 440.15(2)(a), Fla. Stat. (2007); *see also Lalonde v. Checker's Drive-In Rests., Inc.*, 943 So. 2d 993, 994 (Fla. 1<sup>st</sup> DCA 2006). Here, Claimant had periods of temporary total disability when she was kept off-duty due to hospitalizations for testing and/or surgery and recuperation from surgeries related to her neurocardiogenic syncope. Specifically, she was kept off-duty from August 14-16, 2007, October 19-25, 2007, February 27, 2008 through March 6, 2008, and she underwent surgeries for pacemaker revisions on March 30, 2008 and April 17, 2008. All of these hospitalizations and recuperation periods were due to her neurocardiogenic syncope. Consequently, Claimant has established that, during these periods, she was temporarily and totally disabled from performing her work. Accordingly, she is entitled to TTD benefits for these time periods.

#### Temporary Partial Disability Benefits

To be entitled to temporary partial disability benefits Claimant must not be at MMI and must show a causal connection between her injury and a subsequent wage loss. *See* § 440.15(4), Fla. Stat.; *Arnold v. Fla's Blood Ctrs., Inc.*, 949 So. 2d 242, 248 (Fla. 1<sup>st</sup> DCA 2007). "To determine whether an injury and a subsequent wage loss are causally connected, a JCC is to consider the totality of the circumstances." *Arnold*, 949 So. 2d at 248.

Claimant's burden to show causation "may be met by proof which encompasses medical evidence or evidence of a good-faith work search." *Id.* (quoting *Nickolls v. Univ. of Fla.*, 606 So. 2d 410, 412 (Fla. 1st DCA 1992) (applying prior version of the Workers' Compensation Act)). Claimant must prove the compensable injury caused continued unemployment. *See id.* Although no longer statutorily required as a precondition to receiving temporary indemnity benefits, an unsuccessful job search may help provide such proof. *See id.*

Here, Claimant has not worked since the accident. Consequently, she suffered wage loss. The Marion County Employee Health Clinic Forms dated January 15, 2008 and February 7, 2008, along with the testimony of Dr. Mathias establish that, because of her neurocardiogenic syncope, Claimant is unable to continue working as a Sheriff's officer, and she will be limited to sedentary work sitting at a desk without much stress. She cannot stand for long periods of time without potentially blacking out due to blood pressure problems. During the time period for which TPD benefits are sought, Claimant was in and out of the hospital undergoing various medical procedures and surgeries to address her neurocardiogenic syncope. Based on the medical evidence, when considering the totality of the circumstances, Claimant has established wage loss caused by her work-related neurocardiogenic syncope. Accordingly, she is entitled to TPD benefits up to August 18, 2009, the date she reached MMI.

Based on the foregoing, it is hereby **ORDERED** and **ADJUDGED** that:

1. Claimant's neurocardiogenic/vasovagal syncope is **COMPENSABLE**.
2. The claim for authorization of a physician to evaluate and treat Claimant's neurocardiogenic/vasovagal syncope and its sequela is **GRANTED**.
3. The claim for TTD/TPD from August 14, 2007 to present and continuing is **GRANTED** as provided herein.
4. The claim for penalties, interest, costs and attorney's fees is **GRANTED**.
5. The claim for attorney's fees for successfully defending against the E/C's fraud defense is **GRANTED**.

**DONE** and **ELECTRONICALLY MAILED** to counsel this 21<sup>st</sup> day of December, 2009, in Chambers, in Alachua County, Florida.



*Marjorie Renee Hill*

Marjorie Renee Hill  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
1900 S.W. 34th Street, Suite 202  
Gainesville, Florida 32608  
(352)955-2244; [www.jcc.state.fl.us](http://www.jcc.state.fl.us)

Dennis D. Smejkal; [tao@smejkallaw.com](mailto:tao@smejkallaw.com)  
Thomas A. Vaughan; [crivera@vaughanpa.com](mailto:crivera@vaughanpa.com)  
Betty D. Marion; [betty@themarionlawfirm.com](mailto:betty@themarionlawfirm.com); [robin@themarionlawfirm.com](mailto:robin@themarionlawfirm.com)