

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

Andrew Junod,
Claimant,

OJCC Case No. 14-028933LAR

vs.

Accident date: 4/19/2010

State of Florida DOC-NW FL Reception
Center Annex/Division of Risk Management,
Employer/Carrier.

Judge: Laura Roesch

_____ /

FINAL COMPENSATION ORDER

Upon proper notice, a merits hearing was held before the undersigned Judge of Compensation Claims in Panama City, Bay County, Florida on September 24, 2015. The Claimant was present along with his wife. He was represented by Attorney Paolo Longo. The Employer/Carrier was represented by Attorney Colleen Ortiz. At issue were claims flowing from *Petitions for Benefits* filed herein on December 17, 2014 and February 16, 2015, both of which were mediated to impasse on March 19, 2015.¹ The parties have stipulated that the average weekly wage pertinent herein is \$592.40. Counsel for the parties stipulated that the Claimant's wife telephoned his Employer on April 20, 2010 and reported that he had had a heart attack. Counsel for the parties also stipulated that if Claimant prevails on his claims, the 18% impairment rating assessed by Dr. Borzak is appropriate. As detailed herein, I find in favor of the Claimant on all issues.

Claims and Defenses:

The issues for adjudication were:

1. Compensability of coronary heart disease and acute myocardial infarction pursuant to Section 112.18(1), Fla. Stat.;
2. Authorization of a cardiologist for coronary artery disease and acute myocardial infarction;
3. Temporary total disability benefits from April 19, 2010 through May 1,

¹ The *Petitions for Benefits* were mediated on March 19, 2015, 92 days from the December 17, 2014 *Petition for Benefits* and 31 days from the February 16, 2015 *Petition for Benefits*. The final hearing was held 281 days from the filing of the December 17, 2014 *Petition for Benefits* and 220 days from the filing of the February 16, 2015 *Petition for Benefits*. An expert medical advisor was appointed by order dated July 14, 2015. His report was provided to the undersigned on August 31, 2015.

2010;

4. Impairment benefits as opined by Dr. Borzak at 18% impairment; and
5. Penalties, interest, costs and attorney's fees.

The Employer/Carrier defended on the following grounds:

1. The April 19, 2010 claimed date of accident is denied pursuant to Section 440.19(1), as the statute of limitations has run.
2. The April 19, 2010 claimed date of accident is denied pursuant to §440.151(6), as the Claimant did not provide notice of the claimed injury until December 19, 2014.
3. Temporary total disability benefits from April 19, 2010 to the present and continuing as they are not payable as the Claimant's cardiac condition is personal in nature and not related to any employment with the State of Florida or the Florida Department of Corrections; alternatively, the Claimant is not entitled to such benefits as he has not been restricted from employment as a result of the claimed condition;
4. Authorization of a cardiologist is denied as the Claimant's cardiac condition is personal in nature and not related to any employment with the State of Florida or the Florida Department of Corrections;
5. Authorization of emergency treatment at Southeast Alabama Medical Center is denied as the Claimant's cardiac condition is personal in nature and not related to any employment with the State of Florida or the Florida Department of Corrections. Alternatively, such treatment is denied as Southeast Alabama Medical Center will not provide medical records without a signed authorization from the Claimant, and the Claimant has refused to sign such authorization, thereby preventing the Employer/Carrier from obtaining access to medical records directly at issue in the litigation. Further, the Claimant has failed to produce any evidence of such records;
6. Compensability of the Claimant's arterial and cardiovascular hypertension and/or heart disease is denied as the Claimant's cardiovascular hypertension and/or heart disease are personal in nature and not related to any employment with the State of Florida or the Florida Department of Corrections;
7. The major contributing cause of the Claimant's heart disease and death are risk factors unrelated to his employment, including but not limited to a history of cigarette smoking, family history, elevated cholesterol/triglyceride/glucose levels;
8. Payment of permanent impairment benefits is denied as the claimant's cardiac condition is personal in nature and not related to any employment with the State of Florida or the Florida Department of Corrections.

Alternatively, such treatment is denied because the Claimant has not produced competent evidence of permanent impairment, and has prevented the Employer/Carrier from obtaining an opinion on the issue by refusing to provide required authorizations to obtain out-of-state medical records pertinent to the issue and further has failed to provide the Employer/Carrier with such records;

9. No PICA due or owing; and
10. Prevailing party costs.

Documentary Evidence.² At trial, the following documentary evidence was admitted:

Court Exhibits:

1. Trial Summaries, Amended Trial Summary and case law, for argument purposes only (*69, *70, *71,*72).
2. Pretrials and Supplemental pretrials (*35, *42, *43).
3. Petitions for Benefits (*1 and *28) and Responses (*5, *30).
4. Deposition and EMA Report of Dr. Leonard Pianko (*67), filed August 31, 2015 and September 21, 2015 (*67).

Claimant Exhibits:

1. Deposition of Dr. Steven Borzak, Claimant's IME (*66), filed September 21, 2015.
2. Deposition of Annie Brooks (*65), filed September 21, 2015 and copy of personnel file (*74) filed September 24, 2015.
3. Deposition of Sandra Pittman (*64), filed September 21, 2015.
4. Deposition of Idriss Ould, Adjuster (*63), filed September 21, 2015.

Employer/Carrier Exhibits:

1. Deposition of Dr. Joseph Pedone, Employer/Carrier's IME (*45), filed June 25, 2015; and
2. Copy of First Report of Injury (*73), filed September 24, 2015.

Proffer:

1. Motion for Modification of EMA Order filed July 15, 2015 (*54).

Witnesses at trial:

1. Claimant.

² Exhibits are identified by an asterisk (*) followed by a number, representing the docket number.

Findings of Fact and Conclusions of Law

In making my findings of fact and conclusions of law, I have considered and weighed all the evidence presented to me. I have observed and assessed the candor and demeanor of the witness who testified in person before me, and I have resolved all of the conflicts in the testimony. I have not written a detailed summary of all the facts and evidence presented. See, Section 440.25(4) (e), Fla. Stat.; Garcia v. Fence Masters, Inc., 16 So. 3d 200 (Fla. 1st DCA 2009) (compensation order need only contain findings of ultimate material fact necessary to support mandate, rather than a recitation of all evidence presented). Although I may not reference or detail each item of evidence presented by the parties, I have carefully considered all the evidence and exhibits in the context of the arguments of counsel and appropriate statutory authority and case law in making the following findings of fact and conclusions of law:

1. The undersigned Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.

2. The stipulations entered into by and between the parties as noted herein or in the pretrial stipulation(s) filed herein or announced on the record and noted herein are hereby approved and adopted as findings of fact and are incorporated herein by reference.

3. The Claimant is a corrections officer at Northwest Florida Reception Center in Chipley, Florida. His December 2008 pre-employment physical did not reveal any evidence of heart disease or hypertension. On April 19, 2010 Claimant worked his usual shift, from 11:00 p.m. to 7:00 a.m. He later suffered a heart attack while at home. His wife took him to a local emergency room. He was then taken to Southeast Alabama Medical Center in Dothan, Alabama where he underwent an angioplasty, catheterization and the placement of two stents in his right coronary. The parties have stipulated that Claimant's wife called his workplace to let them know that he had suffered a heart attack, that he was in the hospital and that they were unsure when he would return to work.

When Claimant returned to work approximately two weeks later, he was required to provide paperwork that he could go back to work. He obtained this from Dr. Rao, his cardiologist, and gave this paperwork to the control room at work. He also testified that he took pictures from the Cath Lab from his procedure and blockage, discussing and showing the pictures to his co-workers. When the Claimant first returned to work, his Employer kept him out of "confinement" duty for about two weeks as the Claimant testified this was a particularly stressful area. The Claimant was placed in an open-bay dormitory because there were no stairs involved, unlike the confinement area.

During the two-week period he was out, several co-workers called to check on him and wish him well, including his sergeant and his captain, Captain Sawyer, who was the shift officer in charge. The Claimant testified that a captain, whose name he could not recall, asked him shortly after he returned to

work whether the heart attack was work related. The Claimant testified he had no reason to think that it was, so he answered no. The Claimant previously filed a workers' compensation claim following an injury to his back while at work. He testified that because he was at home when his heart attack occurred he did not report it as it "never dawned on him" that it could be considered a workers' compensation claim. Then, in November 2014, Claimant ran into a friend at a local Wal-Mart's; this friend worked at another corrections facility. While they were talking, Claimant learned that his friend had recently had a heart attack and two stents placed and they had a discussion regarding coverage of the heart attack as work related under the Heart and Lung bill. Thus, after learning his heart attack might possibly be compensable, he sought out and obtained legal advice. He then filed a Petition for Benefit on December 14, 2014. I find the Claimant testified in a truthful, credible and forthcoming manner.

4. Section 112.18(1), commonly referred to as the "Heart/Lung Bill," creates a presumption of work relatedness for hypertension and heart disease suffered by a special class of employees, including correction officers such as Claimant. Counsel for the parties are in agreement that Claimant satisfies elements contained within this presumption, and that his heart disease is presumed to be work-related. The Employer/Carrier has denied the claim on the basis that because Claimant did not file a claim seeking benefits until December 17, 2014, well after the statute of limitations period had run. Section 440.19(1) provides "*except to the extent provided elsewhere in this section, all employee petitions for benefits under this chapter shall be barred unless the employee ... has advised the employer of the injury...pursuant to Section 440.185(1) and the petition is filed within two years after the date on which the employee **knew or should have known** that the injury...arose out of work performed in the course and scope of employment.*"

There is no dispute that the Claimant's wife informed the Employer that he had a heart attack. This was done when his wife telephoned in order to let his Employer know that he was hospitalized, having had a heart attack. The question to be addressed is when Claimant knew or should have known his heart condition arose out of work performed in the course and scope of employment. I find the Claimant's testimony persuasive that he was not aware that his heart condition could be deemed an injury arising out of work performed until November 2014 when he was speaking with a co-worker who suggested to him that his condition was possibly work related. It was at this point that the Claimant sought out and was provided legal advice regarding his rights under the circumstances. I therefore reject the Employer/Carrier's argument to the contrary, and find Claimant was well within the two-year statute of limitations at the time he filed a Petition for Benefits on December 14, 2014. I find the Claimant timely filed his petition as soon as he became aware that a heart attack, while employed as a corrections officer, could be arguably considered work related, even though it did not occur in the workplace. I find

the Employer/Carrier herein clearly had notice in a timely manner that the Claimant's cardiac condition was possibly work related, in view of his position as a corrections officer and the presumption that attaches to such condition. I find the Claimant is not barred from pursuing his claim at this time. I found Claimant to be a credible witness and accept his explanation that it never occurred to him that the heart attack he suffered might be compensable and that it was not until he learned of a co-worker's heart attack in November 2014, at which time the two of them discussed that the condition could be work related. I therefore find the Claimant has satisfactorily complied with Section 440.19(1) by filing his petition within 2 years after the date on which he **knew** or **should have known** that the injury arose out of work performed in the course and scope of employment. I therefore deny the Employer/Carrier's defense of statute of limitations.

5. Sandra Pittman is a personal services specialist with the Florida Department of Corrections. She processes payroll and workers' compensation claims. According to her records, Claimant was out from work from April 22, returning to work on May 5, 2010. Annie Brooks is a human resource manager employed by the Department of Corrections and she is also a records custodian for all the records of the employees of the Department of Corrections. The pre-employment date of Claimant's pre-employment physical is December 20, 2008.

6. The Claimant obtained an independent medical examination with Dr. Steven Borzak. Dr. Borzak testified that he could not state within a reasonable degree of medical certainty what the cause of Claimant's heart disease was. When asked what lead to Claimant's coronary artery disease, he stated that he "*...didn't think there was a cause that was clear.*" Dr. Joseph Pedone performed an independent medical examination on behalf of the Employer/Carrier. Dr. Pedone opined that the cause of Claimant's heart disease was his heavy tobacco use, obesity, hypertension, family history and high cholesterol. Counsel for the parties timely requested appointment of an expert medical advisor, based on their representation that a conflict existed in the opinions of their respective IME physicians.

Dr. Leonard Pianko was then appointed to provide an expert medical opinion to resolve the conflict. It is well settled under Florida law that the opinion of an expert medical advisor is presumed to be correct unless there is clear and convincing evidence to the contrary. I find no evidence has been presented that would support rejection of Dr. Pianko's opinion as expert medical advisor. I therefore accept his opinion and find that the cause of the Claimant's heart condition is his work as a Corrections Officer. I find that the Employer/Carrier has failed to overcome the presumption of correctness attached to Dr. Pianko's opinion as an expert medical advisor. The Employer/Carrier challenged Dr. Pianko's testimony, based on "Daubert." Having had an opportunity to review Dr. Pianko's testimony in the context of counsel's arguments, I overrule the Employer/Carrier's objection as I find Dr. Pianko's

testimony is not simply “pure” testimony. Stated another way, I believe he clearly provided sufficient basis for his opinion including the medical records he reviewed, the epidemiology studies of Dr. Kale’s which are clearly appropriate for him to review and consider, coupled with the history he gleaned from the Claimant. Dr. Pianko read the opinions and/or reports of Dr. Borzak and Dr. Pedone as well as their deposition transcripts, the hospital records resulting from the Claimant’s heart attack, and the pre-employment physical from his 2009 hiring. Dr. Pianko also reviewed records from Dr. Peter Rao, the Claimant’s radiologist. These records were reviewed in conjunction with the physical examination and history obtained from the Claimant. In reviewing Dr. Pianko’s testimony, while defense counsel thoroughly went through an itemization of possible or potential risk factors during the course of questioning of Dr. Pianko, I find the questioning did not go so far as to result in Dr. Pianko offering his opinion on such risk factors as specific or pertinent to the Claimant herein. That the Claimant quit smoking 10 years previously was an important factor, in Dr. Pianko’s opinion. He stated that although it did not bring the risk down to zero of developing atherosclerosis, it significantly decreased as a risk factor. Dr. Pianko concluded that the major contributing cause of Claimant’s heart attack was work related. Dr. Pianko opined that the Claimant has several non-occupational risk factors. He noted that the pre-employment physical when the Claimant was hired in 2009 did not show any evidence of heart disease. Dr. Pianko’s medical testimony established that the cause of Claimant’s condition was his job as a Corrections Officer. Furthermore, I accept Dr. Pianko’s conclusion that the cause of Claimant’s heart disease is occupational in nature as opposed to a combination of non-occupational risk factors or non-compliance with a prescribe course of treatment. I therefore reject the Employer/Carrier’s defenses to the contrary. I find in Claimant’s favor on all claims.

WHEREFORE, it is hereby ORDERED and ADJUDGED that:

- a. The claim for compensability of coronary heart disease and acute myocardial infarction, pursuant to Section 112.18(1), is accepted.
- b. The claim for authorization of a cardiologist for coronary artery disease and acute myocardial infarction is awarded.
- c. The claim for temporary total disability benefits from April 19, 2010 through May 1, 2010 is awarded.
- d. The claim for impairment benefits at 18% as opined by Dr. Borzak is awarded.
- e. The claim for penalties, interest, costs and fees is awarded.

DONE AND ORDERED in Chambers at Panama City, Bay County, Florida.



Laura Raese

Laura Roesch
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THIS IS TO CERTIFY that the foregoing order was entered herein and electronically served to counsel for the parties and the Carrier, this 22nd day of October 2015.

/s/ L. Hickman
Commission Deputy Clerk II

COPIES FURNISHED:

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