

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

Thomasena J. Mitchell,
Employee/Claimant,

OJCC Case No. 13-012072ERA

vs.

Accident date: 1/27/2013

Miami Dade County aka MDPD
(Intracoastal)/Miami Dade County Risk
Management,
Employer/Carrier/Servicing Agent.

Judge: Edward Almeyda

FINAL COMPENSATION ORDER ON REMAND

This matter came before me; the undersigned Judge of Compensation Claims, upon the entry of an opinion by the First District Court which reversed a final compensation order dated 4/16/2015 and remanded this matter to the undersigned for further consideration.

The scope of the remand is to make findings regarding whether any potential trigger or triggers for the SVT were occupational.

ANALYSIS UPON REMAND INSTRUCTIONS

1. In the remand, I was given discretion to reopen the medical evidence to address the trigger issue. Upon a further review of the medical evidence, I find that the testimony adequately addresses this issue, such that further medical evidence would not yield any greater clarification. It is noted that the medical evidence came through two highly qualified cardiologists. The focus of this remand order, the causes of the trigger for the SVT apparently has no way of being proved by a test, as testified to by Dr. Borzak (Borzak deposition p. 15).

2. A brief factual background is important to understand this order. The Claimant, an

active police officer, on the date of this accident suffered from a supra ventricular tachycardia, or SVT, which is an accelerated heart beat rate, or arrhythmia. Upon being hospitalized and a catheterization performed, it was discovered that she suffered from an underlying slow accessory pathway, also referred to as an AV node physiology. This was medically described as an anomaly in the “wiring” of the heart nerves, corrected by an ablation. A person with this slow accessory pathway can have a triggering event, which caused the SVT. For this order only the trigger of the SVT is considered, as previously in the order dated 4/16/2015 it was determined that the slow pathway accessory was congenital (non-occupational).

3. While this order hinges on medical testimony, a brief recapitulation of the Claimant’s testimony sets the foundation for the medical testimony. Mrs. Mitchell’s previously accepted testimony is that when she had the abnormal heart beat she was home and had just returned from the emergency room with her 16 year old daughter. She was preparing to give her daughter medicine when she had the heart beat abnormality.

4. The Claimant presented the testimony of Dr. Borzak and the E/C of Dr. Pianko with reference to this SVT’s causation. The SVT has in the previous orders and appellate opinions referred to as the trigger. In reality there is not much variation between the two medical opinions as to the causation of the SVT.

5. When asked what caused the claimant’s SVT, Dr. Pianko testified that “the truth is, I can’t say for sure what caused it” (Pianko depo. P31-32), as to the stimulus that creates the symptoms (the trigger), he said that it could be caused by low potassium, blockages to the heart, or overdoing things. It could also be caused by severe anxiety and stress.

6. Specifically he testified that “there is no obvious reason that made her heart on that particular day, January 27, race in a dangerous way requiring her to be hospitalized...” (Pianko

depo. pp. 41-42). He went on to state that he did not know if doing normal things at home could be a trigger. (Pianko depo. pp. 42-43).

7. Dr. Borzak could not state within a reasonable degree of certainty as to the Claimant's trigger cause of the SVT. He did not know of a medical test that could determine the cause of SVT (Borzak deposition at p. 15), and its triggers are the like of caffeine, stress and a variety of other things that are generally associated with being revved up. He concluded that as the Claimant at the time of the incident was not performing a physical exertion he did not think that nor stress would be a trigger.

8. A careful analysis of these physicians testimony also reveals that there is no real medical conflict in their conclusion. In short, both concluded it was idiopathic, as the cause is unknown. There could be some extraneous know triggers, such as caffeine, stress, low potassium or blockage to the heart. In the Claimant's case there is no answer as to the cause of the "trigger".

9. The remand instructions are that I was "required to consider the evidence and determine whether the Employer overcame the presumption by establishing by competent evidence that the trigger was also non-occupational." Furthermore the instructions on remand stated "If the expert testimony establishes, for instance, that there are one or more possible non-occupational causes for the trigger, or there are no known occupational causes, this testimony...could overcome the presumption."

10. The medical evidence establishes that- specifically in the Claimant's case- there is no way to know what caused the trigger to bring on the SVT. The physicians speculated as to extraneous triggers, but nowhere in this testimony is there a level of medical certainty that would establish that one or more possible non-occupational causes was the trigger for the SVT, or that

there are no known occupational causes to trigger the SVT.

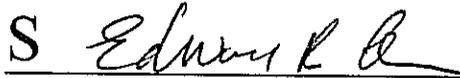
11. Having made the above findings, the E/C has failed to establish by competent evidence facts that overcomes the presumption of F.S. 112.18.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. The claim of Thomasena Mitchell pursuant to F.S. 112.18 is found to be compensable.
2. The Employer/Carrier is directed to furnish the Claimant with a cardiologist qualified to treat the Claimant's heart disease/condition found compensable herein.
3. The Employer/Carrier is directed to comply with the stipulations made on the record as referred herein.
4. Jurisdiction is reserved to determine the amount of fees and costs to the Claimant's attorney,

Paolo Longo, Jr. Esq.

DONE AND ORDERED this 24th day of March, 2016, in Miami, Dade County, Florida.



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