

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

Christopher Sapp,
Employee/Claimant,

OJCC Case No. 17-021343MES

vs.

Accident date: 4/14/2017

State of Florida/Division of Risk
Management,
Employer/Carrier/Service Agent.

Judge: Margaret E. Sojourner

FINAL COMPENSATION ORDER

This matter was heard at a Final Hearing before the undersigned in Orlando, Orange County, Florida on March 6, 2018. Present at the hearing were Claimant, Christopher Sapp and his attorney, Suzanna M. Scarborough. Also present at the hearing was attorney Michael Broussard on behalf of the Employer/Carrier (EC).

Issues:

1. Compensability of the claim.
2. Compensability of SVT, non-ischemic cardiomyopathy and paroxysmal atrial fibrillation.
3. Authorization and payment of treatment for the Claimant with a Board Certified Cardiologist in the claimant's geographical area.
4. Penalties, interest, costs and attorney's fees.

Defenses:

1. Claimant is not entitled to benefits of the statutory presumption or in the alternative the statute will be rebutted.
2. No penalties, interest, costs or attorney's fees are due.

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 testimony and evidence presented. I have resolved all of the conflicts in the testimony and documentary evidence. Based upon the foregoing, the evidence, and the applicable law, I make the following determinations:

1. I have jurisdiction over the parties and the subject matter of this claim.

2. Venue is in Lake County, Florida.
3. The stipulations of the parties are accepted and adopted by me as findings of fact.
4. This case turns on whether an assistant warden fits within the definition of “correctional officer” as found in Section 943.10, Florida Statutes (2016). I find that the position of assistant warden does fall within the definition and as such the claimant suffered a compensable injury and is entitled to the benefits requested.
5. The facts are not in dispute. At all times applicable to this matter Mr. Sapp worked as the assistant warden of operations at the Lake County Correctional Institution. On the date of accident he became ill, was taken to the hospital and underwent testing and treatment for arrhythmic conditions. He was placed on medications for his heart condition and was discharged with a vest to monitor his heart function. In June 2017 he underwent a cardiac ablation. He continues to treat with a cardiologist and to take medications. He filed a claim for workers’ compensation pursuant to Section 112.18, Florida Statutes (2016).
6. A condition or impairment of health of a correctional officer caused by heart disease is presumed to have been accidental and to have been suffered in the line of duty unless the contrary is shown by competent evidence. Section 112.18 (1), Florida Statutes (2016).
7. The definition of a correctional officer for purposes of Section 112.18 is found in Section 943.10, Florida Statutes (2016). That section defines a correctional officer as any person employed full time by the state whose primary responsibilities include the “supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution. Excluded from this definition are secretarial, clerical or professionally trained personnel.
8. The duties of an assistant warden are outlined in the Position Description which is found in the parties’ joint exhibit at DN 21. While the majority of the duties are supervisory in nature the duties also include “maintaining contact with inmates, verbally and in writing, in order to assist with various concerns that arise. Implements and follows up this process by personal intervention or referral to the proper party” and “Investigates and evaluates inmate grievances filed by inmates at the institution. Takes necessary action resulting from findings, as necessary.” The description also states that the assistant warden is to perform other duties as necessary.
9. Mr. Sapp testified at the hearing that he began his career as a correctional officer and while it

is not required for his current position, has maintained that certification. He is the assistant warden of operations which includes maintenance of the facility and the warehouses. He testified that his daily duties included making rounds of the facility to ensure that inmates were provided the proper items for hygiene, that the facility was maintained in a sanitary condition and to ensure food service was being properly done. He oversees the warehouses with food which includes ensuring that no contraband materials enter into the facility. He also goes to the recreational yard to ensure that inmates are behaving and to have the opportunity to talk to the inmates during leisure time. He testified that he could fill in for junior staff as needed because he has maintained his certification. He acknowledged that he is several supervisory levels above the correctional officer position and that correctional officers wear a uniform and that he does not.

10. Warden Sheila Cumbie testified that the assistant warden's position is mainly supervisory in nature. She testified that the assistant wardens have to visit the confinement area on a weekly basis to ensure that staff are doing their jobs and to check on the inmates, to be sure the inmates are okay and that the inmates basic needs are being met. She stated that part of Mr. Sapp's duties include being sure that there were no issues including safety on the compound and that the facility was clean. She agreed that part of his duties include processing and investigating inmate grievances which could include complaints about staff or about missing property or things of that nature.
11. The EC argues that as the assistant warden's duties are primarily supervisory that an assistant warden does not fall within the definition of correctional officer. A correctional officer, according to the EC, would be the first level officers who are directly in contact with the daily activities of the inmates. A similar question was addressed in the case of *Crystal v. State of Florida, Dept. of Management Servs.*, 21 So.3d 134 (Fla. 1st DCA 2009). Crystal worked in the department of corrections as a classification officer. He left due to health problems and applied for in-line-of-duty benefits. His claim was denied on the grounds that he was not in a "special risk" position under Section 121.0515. The First DCA reversed finding that the Commission confused disability retirement with special risk retirement. Crystal maintained that he was a correctional officer under Section 943.10 entitled to the presumption found in Section 112.18(1) that his hypertension was in the line of duty and would entitle him to disability benefits. The Commission argued that contrary to the

definition of correctional officer found in Section 943.10 that a correctional officer must be a special risk position. In rejecting the Commission's argument the First DCA stated that the definition in Section 943.10 was controlling and reference to any other statutory section was not appropriate. The court stated that the evidence was undisputed that a classification officer's primary responsibility is the protection and custody of inmates and that a classification officer investigates inmate activities and inmate disciplinary actions.

12. Mr. Sapp's primary responsibilities include the supervision, protection, care, custody and control of inmates in ensuring that the facility and warehouses are properly and safely maintained. He, according to his job description, is to maintain contact with the inmates, verbally and in writing, in order to assist with various concerns that arise. He has to investigate and evaluate grievances filed by the inmates and take any necessary action in response. He meets the definition of correctional officer found in Section 943.10 and is entitled to a finding of compensability and provision of the benefits claimed.
13. As Mr. Sapp has prevailed in this matter he is entitled to payment of a reasonable attorney's fee and taxable costs by the EC.

Wherefore it is ordered and adjudged as follows:

5. The claimant has compensable SVT, non-ischemic cardiomyopathy and paroxysmal atrial fibrillation.
 1. The EC shall provide a cardiologist to provide ongoing care and treatment for the compensable condition.
 2. The EC shall pay a reasonable attorney's fee and taxable costs on to the claimant.
 3. Jurisdiction is reserved to determine the amount of the attorney's fee and taxable costs in the event the parties are unable to resolve the same.

DONE AND SERVED this 20th day of March, 2018, in Orlando, Orange County,
Florida.



Margaret E. Sojourner
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EXHIBITS

Judge's Exhibits:

1. Petition for benefits (PFB) filed at DN 1.
2. Response to PFB filed at DN 8.
3. Mediation Conference Report filed at DN 16.
4. Uniform Pretrial Stipulation filed at DN 16.
5. Claimant's Trial Memorandum filed at DN 22.
6. E/SA Trial Memorandum filed at DN 18.

Joint Exhibits:

1. Deposition transcript of Sheila Cumbie with attachments filed at DN 19 and 21.