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State: Fla.

Payment of Vacation, Sick Time Isn't 'Earned' Income for Worker Collecting Impairment Benefits: SOUTH [2017-04-03]

In a case of first impression, Florida's 1st District Court of Appeal ruled that a worker's previously accrued sick leave and vacation time could not be included in the calculation of his earnings during the weeks in which he was entitled to impairment benefits.

Case: Eckert v. Pinellas County Sheriff's Office, No. 1D16-2555, 03/31/2017, published.

Facts and procedural history: Thomas Eckert filed a workers' compensation claim for an alleged on-the-job injury from May 2010.

A judge of compensation claims determined that Eckert was entitled to an award of impairment benefits for a period of 169 weeks.

Florida Statute Section 440.15(3)(c) provides that impairment benefits are 75% of a worker's average weekly temporary total disability benefit, although they are to be reduced by 50% for each week in which the employee has earned income equal to or in excess of the his average weekly wage.

Pursuant to this statute, Eckert's employer applied the 50% reduction to the benefits it paid him for the 23 weeks he used his sick leave and vacation time since, he received "income" equal to his average weekly wage for those weeks.

Eckert protested, but JCC Stephen Rosen upheld the employer's action.

Analysis: The 1st District Court of Appeal said Eckert's use of his sick leave and vacation time could not count toward his AWW for the 23 weeks in question.

The court placed emphasis on the fact that Section 440.15(3)(c) references income that is "earned" during a given week.

Since Eckert's sick leave and vacation time were not accrued during the weeks that he drew upon his sick and vacation accounts, the court said the income was not "earned" in that period.

Disposition: Reversed and remanded.

To read the decision, [click here](#).

