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

Douglas Williamson,
Employee/Claimant,

vs.

State of Florida DOC Lawtey CI/Division of Risk Management,
Employer/Carrier/Servicing Agent.
_____/

OJCC Case No. 14-028916WRH

Accident date: 4/26/2010

Judge: William R. Holley

FINAL MERITS HEARING ORDER

THIS CAUSE came on for final merits hearing before the undersigned Judge of Compensation Claims on June 28, 2017. The Claimant, Douglas Williamson, was present and was represented by John Rahaim and Amie DeGuzman, Esquire. The employer, State of Florida DOC Lawtey CI, and the carrier/servicing agent, Division of Risk Management, were represented by William J. Spradley, III, Esquire. For purposes of this order, the employee will be referred to as "Employee" or "Claimant." The employer/carrier/servicing agent will be referred to as "Employer" or "Carrier" or “Employer/Carrier."

This Final Order resolves the petition for benefits e-filed April 28, 2015 and December 17, 2014. All evidence was received and the record was closed on June 29, 2017.

I. ISSUES:

The Claimant sought the following benefits:

1. Compensability of heart disease/arrhythmia
2. Authorization and treatment with a board-certified cardiologist
3. Reimbursement of out of pocket prescription expenses in the amount of $28.00
4. Costs, Attorney’s Fees

II. EMPLOYER/CARRIER'S DEFENSES

The Employer/Carrier defended on the following grounds**:**

1. The claimant has not suffered compensable heart conditions under Chapter 112.18(1)

2. The claimant has not missed work and suffered a disability to qualify for benefits under Chapter 112.18.

3. If presumption applies, the presumption can be rebutted by risk factors.

4. The claimant has not proven his heart condition was caused by employment.

5. The claimant has not proven major contributing cause of his alleged heart conditions.

6. All claims are barred by statutes of limitations.

7. The claimant does not meet the criteria under Chapter 112.18(1). The claimant has a pre-existing heart condition.

8. No medical care required for a heart condition, which is derived from pre-existing condition in existence since 2003.

9. The claimant had a long time heart condition starting in 2003 and did not suffer a new accident or heart injury on April 2, 2011 or April 26, 2010.

10. The claimant did not have an accident, incident or event which would trigger the application of the presumption under Chapter 112.18.

11. The claimant has requested prescription medications related to a pre-existing condition and not connected to an alleged compensable work related incident.

12. The claimant's correct date of accident is 2003 and not April 26, 2010.

13. The claimant's claimed benefits under Chapter 440, Florida Statutes on or after April 26, 2010 is required from the 2003 date of accident which was not timely reported and barred by the Statute of Limitations.

14. The claimant has a pre-existing permanent heart condition that existed prior to the April 26, 2010 incident.

15. No costs of litigation or attorneys fees are due at the expense of the employer/carrier.

III. STIPULATIONS

The parties have stipulated to the following**:**

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

2. Proper venue is Duval County, with the trial to be held in Jacksonville, Duval County, Florida.

3. There was an employee/employer relationship on the date of accident sufficient for this employee to be covered pursuant to Chapter 440 of the Florida Statutes.

4. There is not a dispute as to whether notice of the accident/injury was timely given. The case was not accepted as compensable. There was timely notice of the pre-trial conference and the trial.

5. Workers' compensation insurance was in effect on the date of accident.

6. This case is not governed by a managed care arrangement.

7. The following doctors or medical providers are authorized doctors: Claimant's IME is Dr. Patrick Mathias. E/C's IME is Dr. Nocero. EMA Dr. Pinko was appointed by the judge.

8. The following body parts/ condition Arrythmia is controverted.

9. The petitions for benefits and the responses to that petition were filed as set forth in the Judge's Exhibits noted herein.

10. Pursuant to F.S. 112.18, the parties agree that the following elements have been met:

    a) Claimant is a law enforcement office and falls within the covered class.
    b) Claimant has arrhythmia which is a form of heart disease and has a covered condition.
    c) Claimant had a clean pre-employment physical.

The parties dispute whether Claimant was temporarily disabled from doing his job.

IV. WITNESSES AT TRIAL

The following Witnesses testified live**:**

1. Claimant.

V. DOCUMENTARY EVIDENCE

The following documents were offered into evidence:

Judge's Exhibits:

1. Petitions for benefits e-filed 12-17-14 and 4-28-2015. [D. 1, 23]

2 Responses to petition for benefits e-filed 5-19-15. [D. 31]

3. Uniform Statewide Pretrial Stipulation e-filed 9-17-15. [D. 49]

4. Pretrial Order entered 9-18-2015. [D. 50]

5. Amended E/C's Defenses to Pre-Trial Stipulation e-filed 10-30-15. [D. 58]

6. E/C's Amended Pretrial Stipulation e-filed 6-24-16 [D. 72].

7. Claimant's Motion to Amend Date of Accident on PFBs e-filed 9-8-15. [D. 44]; Response to Claimant Motion to Amend Date of Accident e-filed 9-16-15 [D. 48]; Order Correcting Date of Accident (to 4-26-10 from 4-2-2011) and Granting E/C Leave to Amend Pre-Trial Stipulation entered 10-22-15. [D. 56]

8. Motion to Appoint EMA 7-20-16 [D. 73]; Response to Motion for EMA 7-26-17 [D. 74]; Final Evidentiary Order Re EMA Appointment entered August 26, 2016. [D. 84]; Supplemental Order Appointing an Expert Medical Advisor entered January 25, 2017. [D. 87]; EMA Report e-filed April 17, 2017 [D. 94]

9. Claimant's Trial Statement or Brief (for argument only) e-filed. [D. 101]

10. Employer/Carrier's Trial Statement or Brief (for argument only) e-filed June 27, 2017. [D. 102].

Joint Exhibits:

1. Depo of Dr. Patrick F. Mathias taken June 23, 2016 with exhibits e-filed July 27, 2016. [D. 77, 78].

2. Deposition of Dr. Michael Nocero, Jr. taken August 12, 2015 with exhibits e-filed 7-28-16. [D. 82, 83]

Claimant's Exhibits:

1. Deposition of Bernadette Tyson taken August 19, 2015 e-filed January 13, 2016. [D. 62]

2. Deposition of Sgt. Nathan Blom taken August 19, 2015 e-filed January 13, 2016. [D. 61]

3. Department of Correction incident report e-filed June 28, 2017. [D. 103]

4. Claimant's Exhibit and Witness list [D. 96]

Employer/Carrier's Exhibits:

1. Claimant's deposition taken May 13, 2015 e-filed 7-28-16. [D. 79];
   The Claimant agreed to the deposition coming in for impeachment only but otherwise objected since the Claimant was available to testify. The objection was sustained but the E/C was permitted to proffer the exhibit.

2. Supplemental Claimant's depo e-filed 7-28-16. [D. 80] (Includes Errata Sheet)
   The Claimant agreed to the deposition coming in for impeachment only but otherwise objected since the Claimant was available to testify. The objection was sustained but the E/C was permitted to proffer the exhibit.

3. Four (4) pages of medical records Cardiology Associates of Gainesville e-filed June 29, 2017.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In making the findings of fact and the conclusions of law in this claim, the undersigned Judge of Compensation Claims (hereinafter "JCC" or "undersigned") has carefully considered and weighed all the evidence presented. The undersigned has observed the candor and demeanor

of the witnesses and has attempted to resolve all conflicts in the testimony and evidence presented. Although the undersigned may not have referenced every piece of evidence presented by the parties, the undersigned has fully considered all the factual evidence in arriving at the following conclusions of law.

1. The undersigned JCC has jurisdiction of the subject matter and the parties of this claim. The stipulations of the parties are adopted and shall become part of the findings of facts herein. The documentary exhibits offered by the parties are admitted into evidence and shall become a part of the record herein.

2. The Claimant is a 59 year old corrections officer who began his career at the Florida State Prison in 1993. At the time of his hire, he was required to undergo a pre-employment physical which did not indicate any problems or conditions. He was later transferred to the Lawtey Department of Corrections in 2000 where he continues to work today. His job duties require directly supervising and interacting with approximately 85 inmates in a dorm.

In 2004, the Claimant first learned/experienced atrial fibrillation heart condition problems. He was unable to recall exactly when he first starting taking prescription medication or seeing a cardiologist but recalls he was definitely receiving this treatment in 2005 through April 26, 2010. In March of 2010, the Claimant was hospitalized and underwent treatment for a cardioversion in regard to his heart condition due to the medications not working. Subsequently, he was being monitored for his atrial fibrillation.

While working on the job on April 26, 2010, the Claimant began to feel nervous, weak, tired and sluggish.[1] He called the control room sergeant to be relieved because he did not feel well. Rescue came to check on the Claimant and he was taken by ambulance to Shands at Starke Hospital. There he was hooked up to monitors for several hours and underwent an EKG which registered abnormal results due to a rapid heartbeat. He was later discharged that same day and told to follow up with cardiologist. He already had a cardiologist appointment for the following day. He did not return to work for a week to 10 days.

Following the April 26, 2010 incident, the Claimant continued to have problems. The

[1] Dr. Patrick Mathias also noted additional symptoms listed on the Emergency Room report. See Infra.

following day, the Claimant treated with his cardiologist with Cardiology Associates of Gainesville where he reported he was feeling back to his usual self. The record noted that the Claimant reported feeling weak the day before and that the EKG at the hospital indicated a persistent atrial flutter. Due to this atrial flutter despite the increase in his flecanide dose, the Claimant underwent a repeat cardioversion on May 3, 2010 where he was shocked twice into a normal sinus rhythm. However, the Claimant had problems afterward and the Claimant eventually underwent an atrial ablation on June 28, 2011. The operation successfully ablated four of four pulmonary veins and a left septal, which is part of the left atrium. The Claimant reported improvement afterward and felt that the ablation procedure was success.

3. On or about April 26, 2010, Sergeant T. Rice reported the incident in writing on a Department of Correction Incident Report. The report indicated that the Claimant had requested relief due to medical reasons. The sergeant was advised to activate EMS and upon 5 minutes of arrival an ambulance transported the Claimant to the hospital. The report further noted that the Claimant was treated on the scene by institutional medical staff and then was transported. Major Klein, chief of security, commented on the report that "Officer Williamson was released by Shands and Stark and referred to his cardiologist. . ." The incident report was also signed by Shift Supervisor Lt. B. Tyson and the Warden's assistant. Despite having knowledge of the above, none of these Employer representatives reported this incident as being work related or ever discussed with the Claimant as to the possibility that this incident could be work related or compensable under workers' compensation. Resultantly, an informational brochure per F.S. 440.185 was not sent to the Claimant. A copy of the incident report was not given to the Claimant prior to his filing of a PFB.

4. Although the timeline between the April 2010 incident and the filing of a PFB on December 17, 2014 is somewhat unclear, the Claimant testified at the instant final hearing that he did not know the April 26, 2010 incident would have been covered under workers compensation. He testified that the first time he learned about this being a possibility was a few years later when he spoke to a co-worker named Sergeant Steve Lola about the "Heart Lung Act." The Claimant advised that this conversation took place a couple of days before he hired an

attorney and filed the December 2014 PFB. He later indicated it was 2013 or 2014 when he first understood that his heart condition could have been covered under workers' compensation. After learning this information, the Claimant then contacted Sergeant Blom in December 2014 to report the injury. The Claimant did acknowledge that the Employer had posted the appropriate notice/poster in the work site pursuant to F.S. 440.055.

On cross examination, the Claimant was referred to his first deposition where he testified that he first became aware that his heart condition was work related due to stress on the job a "couple of years" after the incident. The direct question posed to the Claimant was: "[r]egardless of the statute of limitations, when did you connect the two dots in your mind that, one, I have a heart condition and, two, I think my heart condition is related to my employment as a Department of Corrections officer?" Further in the deposition, the Claimant agreed that it would have been around April 2, 2013 but then indicated that he did not know and/or that it could have been at anytime.[2] An Errata sheet was subsequently done where the Claimant changed his answer to "I don't remember." The Claimant credibly clarified his testimony as to the distinction between believing his heart condition was work-related due to stress on the job and knowing that the "Heart Lung Bill" allowed for such a claim to be compensable under workers compensation.

On December 3, 2014, Sergeant Blom testified in deposition that the Claimant approached him about wanting to file a case for workers' compensation under the Heart and Lung Act. In response, Sgt. Blom advised him to notify his supervisor. Sgt. Blom did not do anything right away until he received the April 26, 2010 incident report and the Florida Department of Corrections Employee Report of Illness. The latter report was signed by several layers of management. Sgt. Blom was further questioned about the Employer's policies regarding the reporting of injuries which he indicated was solely the responsibility of the injured employee. It was his opinion that an injury report was not done by the Employer on or about April 26, 2010 as it appeared to be a personal illness.

[2] The Claimant did not have the correct date of the April 26, 2010 incident and the date of accident/disability being used by the attorneys was April 3. 2011. This was later corrected.

5. On November 15, 2015, the Claimant underwent an IME with Dr. Patrick Mathias, board certified in internal medicine, cardiology, critical care, interventional cardiology, electrophysiology and advanced heart failure and transplantation. Dr. Matthias diagnosed the Claimant with paroxysmal atrial fibrillation, dyslipidemia, hypothyroidism, and premature ventricular contractions.[3] In reviewing the emergency room notes for the April 26, 2010 event, the doctor noted that symptoms appeared to include shortness of breath, a rapid/abnormal heart beat, chest pain. Dr. Mathias further indicated that Claimant going to the hospital on April 26, 2010 would not have been a typical flare-up of the Atrial fibrillation but agreed the symptoms claimant had would have been classical symptoms for someone who had gone into atrial fibrillation. The doctor stated "[o]bviously, the patient felt bad enough and symptomatic enough that he had to take the trouble to go to the emergency room." Per Dr. Mathias, the EKG at that time showed "course atrial fibrillation or atrial flutter…basically, this is atrial fibrillation with a rapid heart rate." The doctor noted that the Claimant could not have returned to work in the condition he was in and agreed he would have been off work until seeing his cardiologist the next day. At the time of the IME, the doctor indicated that claimant would be at MMI with a 35% permanent impairment rating. On cross examination, the doctor indicated that the Claimant had classical symptoms of atrial fibrillation but maintained that Claimant's heart rate was a little rapid (two and a half times resting pulse) and thus, the Claimant had gone into paroxysmal atrial fibrillation that day. As to sleep apnea, the doctor advised that there were no good studies listing it as a true risk factor. Thus, he did not have an opinion on what role in general sleep apnea has with atrial fibrillation. The doctor agreed the Claimant had sleep apnea but expressed that the condition was diagnosed after the atrial fibrillation and Dr. Mathias was not sure how to link the two. The doctor opined that the Claimant would need to follow up with a cardiologist because he is still on anti-arrhymic therapy, which involved the medication, flecainide. The doctor noted as well that the Claimant is still having some palpitations which suggest that he is still having arrhythmias.

[3] The doctor described paroxysmal atrial fibrillation as the situation where an individual has a burst of atrial fibrillation, becomes symptomatic, and then in a matter of time, sometimes minutes, sometimes hours, sometimes days, goes back to a nice regular heartbeat and then feels fine for a further duration of time until the next episode.

6. The Employer/Carrier scheduled an IME with Dr. Michael Nocero, Jr., board certified cardiologist and internal medicine, on July 14, 2015. The doctor took a history, reviewed medical records and examined the Claimant. The doctor diagnosed the Claimant with paroxysmal atrial fibrillation/ablation, sleep apnea, dyslipidemia, exogenous obesity BPH, hypothyroidism and gerd. Dr. Nocero opined that the Claimant's atrial fibrillation started in 2003. He opined that the cause of the atrial fibrillation was idiopathic or unknown. The doctor noted that there are some researchers who think that sleep apnea is a risk factor for atrial fibrillation and he suggested that the Claimant use a nocturnal CPAP to treat his sleep apnea. The doctor further advised that he did not believe sleep apnea was caused by the Claimant's occupation as a corrections officer. It was further his opinion that the Claimant was doing well, stable, no work restrictions and at MMI with a permanent impairment rating of 20%. The doctor noted that the ablation had obviously helped the Claimant's situation.

In his deposition, Dr. Nocero was of the opinion that the Claimant did not suffer a new cardiac event on April 26, 2010. The doctor noted that the Claimant had developed palpitations on that day that had sent the Claimant to the emergency room. The doctor opined that the Claimant's atrial fibrillation that occurred on April 26, 2016 was the same condition that he suffered before and was not different in anyway. He opined that the cause of the atrial fibrillation was not due to CAD, cardiomyopathy or valvular heart disease.[4] Consequently, the doctor opined that the condition was idiopathic or from unknown causes. Dr. Nocero did not believe that Claimant's family medical history, prior history of smoking, obesity, hypothyroidism, and cholesterol were not risk facts for Claimant's atrial fibrillation. The doctor did find that Claimant's sleep apnea was a major risk factor as studies indicated a three times the risk of someone without such a condition. It was his opinion that treatment of the obstructive sleep apnea by a sleep study doctor or pulmonologist would be necessary to treat the atrial fibrillation in the future. On cross examination, the doctor agreed that the Claimant's hospitalization in April 2010 and the ablation procedure done in June of 2011 was medically necessary to treat his condition.

[4] The doctor did explain that Claimant's type of atrial fibrillation would still constitute heart disease.

7. On August 26, 2016, the undersigned entered a Final Evidentiary Hearing Order on the Employer/Carrier's Motion for EMA. At that time, the parties agreed that an EMA was needed for a medical conflict regarding the issue of a permanent impairment rating. The parties also agreed that the Claimant had atrial fibrillation on or about 2003 through April 26, 2010. There was a disagreement however on posing this specific question to the EMA as to whether the April 26, 2010 incident was a new and/or separate cardiac event. The undersigned found there was a medical conflict based on the differing doctors' opinions but reserved ruling for the final hearing on whether this question was relevant or germane to establishing or not whether the answer mattered to establishing the F.S. 112.18 Legal Presumption. As can be seen, the issue of the permanent rating was withdrawn prior to the final hearing. This legal argument is being addressed later in this Final Compensation Order.

8. Resultantly, Dr. Leonard Pinko was appointed to serve as the EMA. On March 29, 2017, the doctor performed a history and physical examination on the Claimant. He reviewed several composites of medical records and depositions. The EMA opined that the Claimant's atrial fibrillation is permanent and may reoccur intermittently. The doctor agreed with Dr. Nocero that the April 26, 2010 was not a new cardiac event and that the Claimant had a history of atrial fibrillation. It was his opinion that the Claimant fibrillation was idiopathic or from an unknown cause. He listed risk factors as hypothryroidism and sleep apnea It was his opinion that the did not believe Claimant's atrial fibrillation was caused by the job. The doctor opined that once a person has atrial fibrillation there is a higher likelihood of developing further episodes of atrial fibrillation. Dr. Pinko noted "We have a cardiac saying, 'atrial fibrillation begets atrial fibrillation.'" Resultantly, the doctor believed the April 26, 2010 event was related to multiple previous episodes of atrial fibrillation and not due to a new event. Apparently the doctor found that a "re-occurrence" of an off and on again condition was deemed to be one and the same as a permanent on going situation. The doctor did not place him at MMI or assign a permanent impairment rating since he did not have a new cardiac event. At the time of the EMA appointment, the doctor noted that the Claimant appeared stable and had returned to work without any difficulty. The EMA was not deposed in this case.

ANALYIS AND LEGAL CONCLUSIONS

9. Pursuant to Florida Statutes, Section 440.19(1) (2006), except to the extent provided elsewhere in that section, all employee petitions for benefits shall be barred unless the employee has advised the employer of the injury pursuant to Section 440.185(1) and the PFB is filed within 2 years after the date on which the employee knew or should have known that the injury or death arose out of work performed in the course and scope of employment. Case law further provides that if an employer breaches its statutory obligation to provide the statutory notices including the sending of an informational brochure which would place a claimant on notice of his/her rights under workers compensation, then the statute of limitations on the employee's workers' compensation claim shall be tolled until such time as the employee obtains actual knowledge from any source that he may be entitled to benefits. Timmeny v. Tropical Botanicals Corp., 615 So. 2d 811 (Fla. 1st DCA 1993)("Consequently, in consideration of [F.S. 440.185(2) informational brochure], we are of the view that if an employer, as here, receives information that an employee's injury or condition may be work-related, but fails to comply with its statutory obligation to provide notice of same, the employer must be estopped from later asserting the statute of limitations as a defense under circumstances disclosing that the employer's breach of its statutory duty to inform resulted in prejudice to the claimant.")

Further, it has been established that a claimant has the burden of proof of establishing estoppel by a preponderance of the evidence unless the employer/carrier has complied with statutory notice provisions including F.S. 440.185, whereupon a claimant's burden is increased to a clear and convincing evidence standard. Miranda v. Azul Plastering Corp, 74 So. 3d 1123 (Fla. 1st DCA 2011). If the employer/carrier has not complied with this statute, and the claimant has met their burden, the burden shifts to the employer/carrier to demonstrate that the claimant had "actual knowledge" of the limitations period. Id.

In the instant case, the Claimant acknowledged that a poster had been publicly displayed at the work place. He also acknowledged on three (3) other occasions where he had non heart disease related "injuries" that he received the informational brochure. However, the Employer/Carrier did not mail him an informational brochure per F.S. 440.185(4) following the

April 26, 2010 accident. Thus, the burden of proof for establishing estoppel would be by a preponderance of the evidence. The information brochure itself does not contain specific information regarding the existence or availability of the Heart Lung Bill or Legal Presumption for correctional officers et al. However, the providing of this informational brochure serves to put the injured worker on notice that he may have a workers' compensation claim and as to the existence of the running of the statute of limitations clock.

In reviewing the testimony of the Claimant, it is reasonable and credible to belief that his entitlement to benefits under workers compensation would not have effectuated until his conversation with his co-worker which took place in 2014 or 2013 at the earliest. The burden then shifts to the Employer/Carrier to show actual knowledge that the Claimant was aware he was entitled to benefits. The evidence does not support this finding. Although the Claimant believed that his heart condition was caused by stress at work, he was not aware that he was entitled to benefits. In further support of this conclusion, the Employer representatives themselves did not view this as a workers' compensation accident at the time of the April 26, 2010 incident despite an incident report being created by the Employer and signed by several supervisors. Based upon the above, the undersigned respectfully finds that the statute of limitations was tolled by the December 2014 PFB and the defense is rejected.

10. The Employer/Carrier has asserted a defense that the Claimant did not have a new accident, incident or event which would trigger the application of the presumption. Counsel makes this interesting argument which is supported by factual evidence of Claimant's pre-existing atrial fibrillation that was most undoubtedly taking place prior to the April 26, 2010 incident. The EMA, Dr. Pinko, was asked to resolve the medical conflict as to whether the flare up was a new event or not and ultimately opined that it was not a new accident or event despite the paroxysmal nature of the condition. However, the undersigned finds that this factual determination is not germane when considering whether the defense at bar has an actual legal basis for the judge to consider.

After closely reviewing the plain meaning of the statutory language outlined in the Legal Presumption and the case of City of Temple Terrace v. Bailey, 481 So. 2d 49 (Fla. 1st DCA

1985), the undersigned is compelled to agree that there is no legal authority establishing this defense outside of the necessity of proving a clean pre-employment physical in establishing the Legal Presumption. See Id. (stating "[t]here is . . . nothing in the statute [that] specifically excludes congenital or preexisting heart disease from its coverage" and "the fact that such a disease or condition may be preexisting does not eliminate the possibility of work-related aggravation.") Bailey further explains that a congenital condition (or a preexisting condition by reasonable inference) would "merely be a part of the evidence available to the E/C to overcome the statutory presumption of work relatedness." Id.[5]

The Employer/Carrier has asserted that case of Smith v. City of Daytona Beach Police Dept., 143 So. 3d 436 (Fla. 1st DCA 2014), demonstrates legal support of the instant defense. Id. (upholding a judge's ruling denying benefits based on doctrines of res judicata and collateral estoppel for a pre-existing heart condition- heart transplant) However in Smith, there is a critical distinguishing fact that the judge had previously ruled that the statute of limitations had run which triggered a res judicata analysis. This distinction is spelled out in Smith as well where the Court contrasted that case with other case law opinions. Id. ("[i]n contrast to Jones and Michels, [the instant case involves a situation where] Claimant's underlying condition, specifically the heart disease that resulted in the heart transplant and implementation of a pacemaker, was previously adjudicated to be non-compensable.") Thus, the undersigned finds that the Smith case does not apply to the instant facts. Therefore, the analysis must continue regarding the Legal Presumption below.

11. Florida Statutes Section 112.18(1) sets forth the required elements for applying and establishing the legal presumption in the case at bar (hereinafter referred to as "legal presumption.") The Supreme Court in Caldwell v. Division of Retirement, 372 So. 2d 438, 441 (Fla. 1979) held this legal presumption relieves firemen and police of the necessity of proving causation of the disease and "cast on the employer the burden of persuading the trier of fact that the disease was caused by a non -occupational related agent." To be entitled to such presumption,

[5] The undersigned is aware that Bailey has been flagged as having "severe negative treatment" where part of the opinion was receded from in Punsky v. Clay County Sheriff's Office, 18 So. 3d 577 (Fla. 1st DCA 2009). However, the discussion about excluding preexisting and congenital conditions from the Legal Presumption was not addressed as being receded from and therefore remains good law.

a claimant must prove each of the four (4) elements: (1) he /she is a member of the protected class; (2) he /she passed a pre - employment physical indicating the disease was not then present; (3) he /she has since such time been diagnosed with the disease; and (4) the disease has resulted in disability.

The Employer /Carrier has stipulated that the Claimant meets the requirements of the member of a covered class as he was a corrections officer on the alleged date of accident; 2) Claimant had atrial fibrillation which is a covered condition; and 3) the Claimant had a clean pre-employment physical.

The remaining element is whether Claimant's atrial fibrillation on April 26, 2010 has resulted in a disability. F.S. Section 440.151(3) defines "disablement" as a disability which is described in F.S. Section 440.02(13) whereby the term is defined as "the 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." A disability occurs when a claimant becomes actually incapacitated, partially or totally, from performing his employment. See City of Mary Esther v. McArtor, 902 So. 2d 942, 944 (Fla. 1st DCA 2005); See also Jacksonville Sheriff's Office v. Shacklett, 15 So.3d 859 (Fla. 1st DCA 2009). In Bivens v. City of Lakeland, 993 So. 2d 1100 (Fla. 1st DCA 2008), the District Court of Appeal held that the presumption afforded by Section 112.18 is "only applicable when a claimant's ... hypertension result[s] in total or partial disability or death. Id. at 1102. However, the First District Court of Appeal provided additional direction as to establishing disability by holding that "there [is] a space for a claimant whose body might retain the physical strength and coordination to perform his job duties for a time, but who has been officially advised by his doctor - via medical work restrictions - to forbear from engaging in his work so as to avoid potential further injury or death due to his ... hypertension." Rocha v. City of Tampa, 100 So. 3d 138 (Fla. 1st DCA 2012).

Dr. Nocero and or Dr Pinko did not provide an opinion as to disability or work restrictions following the April 26, 2010 event. The only unrefuted opinion on this matter came from Dr. Mathias who indicated that the Claimant should/could not have gone back to work during the atrial fibrillation flare up. Moreover, common sense would dictate that an individual would not want to engage in an activity (work or otherwise) that could make the atrial fibrillation become worse or speed up further. Based upon the medical evidence, the Claimant has

established a disability taking place on April 26, 2010 and therefore the Legal Presumption is in effect.

12. The burden then shifts to the Employer/Carrier to present via medical evidence that: 1) the claimant's employment was not the occupational cause of the heart disease; and 2) the cause of the trigger was also non-occupational. Mitchell v. Miami-Dade Cty., 186 So. 3d 65 (Fla. 1st DCA 2016) City of Jacksonville v. Ratliff, __ So. 3d __, 1D15-5844, (Fla. 1st DCA 2017). As the Claimant asserted a presumption-only claim, the E/C's burden on rebuttal is competent evidence. Id. When the subject heart disease results from a combination of an underlying condition with a "triggering event", an application of a two tiered rebuttal analysis must be done whereby the employer/carrier is also required to overcome the presumption of the trigger. Id.

In the instant case, all of the doctors have opined that the cause is idiopathic or unknown. Such medical testimony as to the lack of a known cause fails to establish that the Claimant's employment was not the occupational cause of the heart disease where the burden rests on the Employer/Carrier. While it is true that Dr. Nocero and Dr. Pinko identified major risk factors or risk factors, such as sleep apnea, they did not opine that the major risk factors rose to the level as being causes. Dr. Pinko appeared to indicate that the cause of Claimant's heart condition was not work related but did not sufficiently explain how he could rule it out.[6] There also was not any medical evidence presented as to a non-work related trigger. LeBlanc v. City of W. Palm Beach, 72 So. 3d 181 (Fla. 1st DCA 2011)("Because the [e/c] could not, by competent evidence, show that "the" or "all" possible factors causing the "trigger event" were non-work related, the presumption prevails.) Therefore, the Legal Presumption stands and compensability is established for the claim.

[6] Dr. Pinko's opinion regarding causation was not a question posed to the doctor based on a medical conflict. Therefore, the doctor's opinion does not receive the presumption of correctness that an EMA normally would for this particular item. In the event a higher court deems the EMA to have the presumption of correctness on the issue of causation, the undersigned finds that there is clear and convincing evidence through the other doctors establishing an idiopathic cause otherwise. Finally, the EMA's opinion was not supported by a reasonable, complete or logical explanation as to how the EMA reached the decision that the unknown cause was not work related.

13. No evidence or argument was presented as to the $28.00 medical bill for reimbursement. Based on the lack of evidence, the undersigned is compelled to deny authorization of the reimbursement.

14. The attorney for the Claimant has performed a valuable service for his/her client and is entitled to attorney's fees at the expense of the Employer/Carrier. Jurisdiction is reserved to determine the amount of either, or both, if the parties are unable to agree. As the instant case appears to potentially involve both Claimant and the Employer/Carrier to be considered prevailing parties, jurisdiction is reserved to determine entitlement and the amount for reimbursement of taxable costs pursuant to F. S. Section 440.34 for both parties. Jurisdiction is hereby reserved to determine the amount thereof if the parties are unable to amicably resolve this issue.

WHEREFORE, it is CONSIDERED, ORDERED and **ADJUDGED** that:

1. The claim for compensability of heart disease/arrhythmia is hereby awarded

2. Accordingly, authorization and treatment with a board-certified cardiologist is awarded.

3. The claim for reimbursement of out of pocket prescription expenses in the amount of $28.00 is Denied and Dismissed with prejudice.

4. The attorney for the Claimant has performed a valuable service for his/her client and is entitled to attorney's fees at the expense of the Employer/Carrier. Jurisdiction is reserved to determine the amount of either, or both, if the parties are unable to agree. As the instant case appears to potentially involve both Claimant and the Employer/Carrier to be considered prevailing parties, jurisdiction is reserved to determine entitlement and the amount for reimbursement of taxable costs pursuant to F. S. Section 440.34 for both parties. Jurisdiction is hereby reserved to determine the amount thereof if the parties are unable to amicably resolve this issue

DONE AND SERVED this 30th day of June, 2017, in Jacksonville, Duval County, Florida.

William R. Holley
Judge of Compensation Claims
Division of Administrative Hearings
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