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

Ronald Green,
Employee/Claimant,

vs.

City of Jacksonville/City of Jacksonville Risk Management,
Employer/Carrier/Servicing Agent.
_____/

OJCC Case No. 16-021376WRH

Accident date: 3/1/2016

Judge: William R. Holley

FINAL MERITS HEARING ORDER

THIS CAUSE came on for final merits hearing before the undersigned Judge of Compensation Claims on July 10, 2017. The Claimant, Ronald Green, was present and was represented by John Rahaim, Esquire and Amie DeGuzman, Esquire. The employer, City of Jacksonville, and the carrier/servicing agent, City of Jacksonville Risk Management, were represented by Michael Arington, 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 March 29, 2017. All evidence was received and the record was closed on July 10, 2017.

I. ISSUES:

The Claimant sought the following benefits:

1. Authorization of an appointment with a board certified cardiologist
2. Compensability of Heart Disease
3. Cost and Attorney's Fees

II. EMPLOYER/CARRIER'S DEFENSES

The Employer/Carrier defended on the following grounds:

1. The statutory presumption at section 112.18(1) Fla. Stat. will be rebutted by evidence that Claimant's coronary artery disease and heart attack on the accident date resulted from non-occupational causes.

2. Claimant did not suffer an accident in the course and scope of employment.

3. Claimant did not suffer an occupational disease

4. The Employer is not estopped from denying compensability of heart disease

5. Authorization of treatment with a cardiologist is denied because heart disease.

6. 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. Notice of the accident/injury was timely given. The E/C invoked the 120 day pay and investigate rights letter on March 9, 2016. A written Denial was done on June 1, 2016. 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. If medical benefits are determined to be due or stipulated due herein, the parties agree that the exact amounts payable to health care providers will be handled administratively and medical bills need not be placed into evidence at trial.

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

8. The following doctors or medical providers are authorized doctors: Dr. Dietzius during the 120 day pay and investigate period. IME Dr. Ramon Costello

9. The following body parts/conditions are in dispute: Heart Disease or CAD.

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

11. Claimant is a former Florida Highway Patrol officer and current certified bailiff law enforcement officer which is a covered class per the 112.18 legal presumption.

12. Claimant has coronary artery disease ("CAD") which is a covered condition per the 112.18 legal presumption.

13. Claimant's pre-employment physical did not show any evidence of CAD.

14. Claimant was disabled when he underwent a stenting and emergency angioplasty on March 3, 2016.

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. Petition for benefits e-filed March 29, 2017; Petition for benefits e-filed September 1, 2016. [D. 28 & 1]

2. Mediation Conference Report e-filed January 5, 2017. [D. 16]

3. Uniform Statewide Pretrial Stipulation e-filed January 17, 2017. [D. 18]

4. Pretrial Order entered January 17, 2017. [D. 19]

5. Stipulation for Dismissal and Re-filing Claim e-filed March 29, 2017. [D. 29]

6. Claimant's Trial Statement or Brief (for argument only) e-filed July 7, 2017. [D. 50]; Exhibit A to Claimant's Trial Memorandum e-filed July 7, 2017. [D. 51]

7. Employer/Carrier's Trial Statement or Brief (for argument only) e-filed July 6, 2017. [D. 38]

8. Joint Stipulation e-filed July 10, 2017. [D. 53]

Joint Exhibits:

1. Composite of: Dr. Dietzius depositions (2 transcripts), medical records and exhibits taken March 17, 2017 and June 29, 2017, e-filed July 6, 2017. [D. 49 & 40, 41]

Claimant's Exhibits:

1. Deposition transcript of Dr. Castello with exhibits [D. 36]

2. Medical Records Composite of Baptist Primary Care, Jacksonville Heart Center, and Baptist Medical Center (for factual purposes only) e-filed July 6, 2017. [D. 37]

Employer/Carrier's Exhibits:

1. Medical Records Composite of Memorial Medical Center (for factual purposes only) e-filed July 6, 2017 [D. 44, 45 and 46]

2. 120 day letter dated March 9, 2016 e-filed July 6, 2017. [D. 43]

2. Transcript of Claimant's deposition taken November 15, 2016 (for impeachment purposes only). [D. 48]

3. Written Denial dated June 1, 2016 e-filed July 6, 2017 [D. 42]

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. Claimant is a former Florida Highway Patrol officer who is now a certified bailiff. In 2007, the Claimant underwent a pre-employment physical that showed no evidence of heart disease. He was hired shortly thereafter. As a bailiff, the Claimant's job duties include monitoring and moving prisoners within the courthouse, arresting adults and juveniles, breaking up fights among other stressful activities.

3. On March 1, 2016, the Claimant was in the gym on the treadmill after work around 3:30pm. He testified that he did not remember anything stressful occurring on that date prior to him being on the treadmill. He worked out first with weights and then started working out on the treadmill. After 10 minutes, the Claimant was out of breath and started feeling bad. He went home and sat down. He felt better but then started feeling "clammy" and sweaty on his hands. As a result, his wife took him to Baptist Medical Center emergency room after experiencing various symptoms. At the Emergency Room, the Claimant complained of chest pain that followed multiple episodes of chest pain in the weeks preceding the accident date. There the

hospital performed a heart catheterization where they found two blockages in the Claimant's left anterior descending artery ("LAD") , a 95% blockage in the proximal segment of the artery and a 50% blockage (depending on the view) in the distal part of the artery. A stent was inserted at the site of the 95% blockage but not at the site of the 50% blockage.[1] Later that same day, the Claimant experienced an acute stent thrombosis where the stent suddenly had an acute clot which usually is caused by an under-expanded stent or failing to catch a lesion (plaque or narrowing of the artery) prior to the stented area. After being discharged from the hospital four to five days later, the Claimant went for cardiac rehabilitation for a few months with Dr. Harold Dietzius.

The Claimant testified four to five weeks prior to this March 1, 2016, heart attack event that he had experienced a gradual buildup of a shortness of breath and noticed a difference in his "wind" while walking four blocks from his car to the courthouse. It came and went during this time. It also took place during moments of exertion. He was not on any prescribed medication at this time. Approximately two weeks before his heart attack, the Claimant was up and down in his attic doing some remodeling where he experienced shortness of breath. The Claimant indicated that he also was claustrophobic in the attic tight space. The Claimant's routine on March 1, 2016, was not unusual as he would work out 2-3 times a week around 3:30 pm after work. The gym was electronically paid directly from his pay check but he was not required to attend.

4. The Claimants' previous medical history was submitted via various medical records in pertinent part as follows:

> -A pre-employment physical done in 2007, demonstrated total cholesterol of 210; triglycerides of 250 (abnormal); LDL of 123 (acceptable range) and HDL (normal), blood pressure of 229/92.
>
> -A pre-employment physical done on October 10, 2008 demonstrated total cholesterol of 198 (normal); triglycerides of 167 (mildly high); LDL of 122 (acceptable range) and HDL of 43 (normal).
>
> -On May 9, 2011, the Claimant's numbers were total cholesterol of 172 (normal); triglycerides of

[1] Per Dr. Ramon Castello, the segment is important because the more proximal the blockage is, the more territory is at risk because it runs from the aorta to the most distant parts of the heart. Thus, if blockage is up front, everything thereafter is at risk. If the blockage is very distal, there is only a little amount of myocardium at risk. Generally, doctors do not intervene via stenting if the blockage is less than 70 percent.

157 (mildly elevated); LDL of 93 (acceptable range); HDL of 48 (normal) and BP 136/84, heart rate 75, BMI 29, weight 202.

-On May 27, 2011, the Claimant blood pressure (left) 127 / 84 (right) 126/90 with BMI of 28.9.; weight 201 pounds, BMI 28.9

-On July 1, 2011, the Claimant's blood pressure 126 / 80, Peak 150/60 with BMI 29.2 weight 203.

-On July 15, 2011, the Claimant's blood pressure 134 / 82 with BMI 29.2 weight 203.

-On September 8, 2011, the Claimant's blood pressure 129 / 83 weight 198 pounds, BMI 28.5.

-On April 30, 2012, the Claimant's blood pressure readings 150/79 and 120 / 78 weight 202 pounds, BMI 29.1.

-On June 12, 2012, the Claimant's blood pressure was 129/80, BMI still 25.

-On June 22, 2012, the Claimant's numbers were total cholesterol of 193 (normal); triglycerides of 147 (mildly elevated); LDL of 111 (acceptable range) and HDL of 53 (normal). [Noted in June 26, 2012 medical note]

-On June 26, 2012, the Claimant's blood pressure was 129/80, Weight 205, BMI 29.5

-On January 9, 2013, the Claimant's blood pressure was 119/74, Weight 205 with BMI of 29.

-On February 4, 2014, the Claimant's blood pressure was 148/89, Weight 206, BMI 29.6.

-On July 1, 2014, the Claimant's blood pressure was 127/85, Weight 207, BMI 29.7.

-On September 7, 2014, the Claimant's numbers were total cholesterol of 189 (normal); triglycerides of 169 (mildly elevated); LDL of 105 (acceptable range) and HDL of 50 (normal).

-On September 11, 2014, the Claimant's numbers were total cholesterol of 189 (normal); triglycerides of 169 (mildly elevated); LDL of 105 (acceptable range) and HDL of 50 (normal) blood pressure was 143/79 and 136/80, BMI was 29.56 (overweight but not obese.)

-On March 1, 2016, the Claimant's blood pressure was 156/85

-On March 11, 2016, the Claimant blood pressure was 126/78 with BMI of 29.56

-On August 17, 2016, the Claimant's numbers were total cholesterol of 123 (normal); triglycerides of 99 (mildly elevated); LDL of 47 (acceptable range) and HDL of 56 (normal). The Claimant was on Lipitor at that time of this test.[2]

[2] It is likely that some results were not included in the summary. However, the overall summary supports that the Claimant did not have hypertension (at best borderline hypertension) and that the cholesterol levels were within normal ranges and/or being managed .

Subsequent to the 2007 high blood pressure reading above, the Claimant was required to undergo some extra tests including a stress test which indicated possible signs of hypertension. He was required to see a cardiologist, Dr. Dillahunt, who ultimately determined that there was no evidence of cardiovascular disease. Afterward, Claimant was able to work as a law enforcement officer and was not prescribed any medications.

In 2011, the Claimant underwent a heart catheterization where he had mild diffuse blockage to the same artery and it was not stented. No percentages were quantified regarding the "diffuse irregularities" of the LAD. The BMC Catheterization Report indicated ejection fraction was estimated to be approximately 60% but "minimal" or "minor" irregularities were found as to any blockage. In a July 1, 2014 medical note there was mention of Claimant working as a police officer and being in a "stressful job" At the time of the March 1, 2016 heart attack, the Claimant was only taking aspirin as medicine.

5. The Claimant was authorized to treat with Dr. Harold Dietzius, interventional cardiologist, under a 120 day pay and investigate period. The doctor initially examined the Claimant on March 16, 2016 and four (4) additional visits ending May 17, 2017. The doctor initially opined that the risk factors for Claimant's CAD diagnosis included: hyperlipidemia/hypercholesterolemia and hypertension.[3] The doctor observed that the Claimant's cholesterol and triglyceride levels were elevated at the time he was hired. Using that information, he extrapolated these cholesterol levels through 2016 where it was this opinion the cholesterol levels would eventually have resulted in the blockage/chest pain incident that took place in March 2016. In reaching this conclusion, the doctor admitted he was "taking a leap of faith" and was "assuming" that Claimant's cholesterol level continued to be elevated as the doctor did not have the primary care physician notes from 2007 to 2016. Dr. Dietzius admitted that he did not know what the exact cause of Claimant's hyperlidemia would have been. The doctor further opined the Claimant's mildly elevated high blood pressure in 2007 also was a risk factor. Yet, the doctor acknowledged that he did not know if the Claimant had blood pressure problems throughout the years where it was untreated.

[3] The doctor explained that these two conditions were basically the same thing: Elevated cholesterol levels. He advised that high triglyceride cholesterol levels over 200 were "bad" and high LDL levels over 40 or higher were "good" as it related to CAD/heart disease.

As to the March 1, 2016 heart attack, Dr. Dietzius opined that it was due to a soft plaque rupture in the proximal artery that began 10 days before the accident date when the Claimant was up in the attic and experienced chest pain symptoms.[4] The doctor suspected the Claimant's blood pressure was "up a little bit" which potentially could have ruptured the fibrous cap muscle cell. It was also his belief that the Claimant developed sort of spontaneous blood flows which resulted in the chest pain going away. But days later, the doctor speculated that the Claimant while on the treadmill experienced high blood pressure and the plaque probably ruptured again.

The doctor was not able to opine on specific numbers as to plaque buildup other than to rely on the 2011 catheterization results and the end result from the 2016 catheterization. Dr. Dietzius stated "And again, I couldn't tell you whether the plaque in the proximal LAD in 2011 was 10 percent, 20 percent, 30 percent, but it did state that he had, you know, irregularities." The doctor conceded that either work stress or non-work stress could have resulted in high blood pressure triggering it to rupture. Nonetheless, the doctor conflated the previously mentioned risk factors with causes for the rupture. The doctor further placed the Claimant at MMI with a class 2 rating of 20% as of March 16, 2016 for the CAD.

On cross examination, the doctor agreed that it would have helped to see the records/testing numbers for the Claimant's Cholesterol/triglycerides between 2007 and 2016. In agreeing, the doctor stated "[b]ecause if his numbers were controlled over the years, then the advancement of plaque should not have occurred to that degree." The doctor was then shown the Claimant's test results outlined earlier above but still believed that the mildly elevated triglycerides were the cause for the existence of the plaque and or buildup. Despite agreeing that the Claimant's cholesterol numbers were "relatively controlled" and "stable" from 2011 and 2016, the doctor maintained that the plaque continued to exist even if there was regression and/or no growth in the plague levels. The doctor admitted that the Claimant had borderline hyperlipidemia and did not have persistent hypertension as there were times when he was hypertensive and other times where he was not.

It was also observed that the Claimant had a history of Gilbert's Syndrome which is a condition that decreases the risk of CAD. Dr. Dietzius indicated that this syndrome would be

[4] Once a rupture takes place, the platelets, thrombin and other particles in the bloodstream come and block the hole, which then blocks the blood vessel that causes a heart attack.

the "complete opposite" of a risk factor for CAD and was unable to answer how such a condition could co-exist with Claimant's hyperlipidemia.

6. The Claimant designated Dr. Ramon Castello, cardiovascular disease and echocardiography specialist as an IME physician. The doctor performed the IME and prepared a report on February 6, 2017. The doctor was later deposed on March 3, 2017. The doctor diagnosed the Claimant as essentially having a condition of CAD where he had unstable angina which was stented. However, he opined that the cause of Claimant's CAD was unknown. Dr. Castello opined that a 90 percent stenosis or 45 percent ejection fraction could be a reason for a myocardial infarction but did not see where it was documented.[5] As for cholesterol/dyslipidemia, the doctor reviewed several test readings which he noted were within normal range. The doctor agreed that the 2007 reading for triglycerides was mildly abnormal. Yet, the doctor did not find there was a clear-cut indication that treatment would have been needed other than possibly to encourage a decrease in carbohydrate diet. In support of his opinion on causation being unknown, the doctor indicated "But, you know, we also know it's [Cholesterol levels] not the only factor why somebody develops coronary disease. And why did he go from minor irregularities in 50 years to 95 percent in three? I mean, clearly there's something. Again this is the part we don't know." It was further his opinion that the claimant did not have hypertension. The doctor noted that the only evidence of hypertension was what was found at the 2007 pre-employment evaluation. Dr. Castello also noted that the Claimant had not been prescribed medication in 2007 or at any time prior to the March 2016 heart attack. Dr. Castello placed the Claimant at MMI for class 2 category of 20% permanent impairment rating.

7. 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 the "legal presumption.") To be entitled to such presumption, a claimant must prove each of the four (4) elements: (1) he is a member of the protected class; (2) he passed a pre-employment physical indicating the disease was not then present; (3) he /she has since such time been diagnosed with

[5] Another possible reason provided by the doctor was "stunned myocardium" which is a condition where the part of the myocardium stops working when it is ischemic for a prolonged amount of time, but after revascularizing the artery through a stent then that function recovers. However, the doctor did not see any evidence of this condition.

the disease; and (4) the disease has resulted in disability. The Employer/Carrier does not dispute the Claimant meets the four requirements to apply the Legal Presumption: Claimant is in the class of employees covered by the presumption; Claimant suffered CAD, a covered condition; Claimant was disabled when he underwent the catheterization procedure to insert the stent at the site of the 95% blockage; and Claimant's pre-employment physical did not reveal evidence of CAD.

The burden of proof 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 Employer/Carrier's burden on rebuttal is competent substantial evidence ("CSE"). 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 an employer/carrier is also required to overcome the presumption of the trigger. Id; LeBlanc v. City of W. Palm Beach, 72 So. 3d 181 (Fla. 1st DCA 2011)("Because the [e/c1 could not, by competent evidence, show that "the" or "all" possible factors causing the "trigger event" were non-work related, the presumption prevails.)

8. The Employer/Carrier has not sufficiently shown through CSE evidence that the Claimant's employment was not the occupational of CAD. Although an expert in his field, Dr. Dietzius has given us his best guess as to what has caused the CAD. It is not however definitive or based on objective medical findings as to what happened between 2011 and 2016. He has opined as to risk factors of hypertension and dyslipidemia/high cholesterol which have been shown through the medical records to be borderline at best. When weighed against Dr. Castello's opinion regarding these risk factors, the undersigned finds Dr. Castello's reasoning and conclusion to be more reasonable and logical that the cause of Claimant's CAD is unknown.

As to the "triggering event", it also has not been sufficiently shown by CSE that "the" or "all" possible factors were non-work related. Once again, Dr. Dietzius provides us his best guess as to what happened – a spike in blood pressure rupturing weakened area of the LAD impacted by existing plaque from maintained cholesterol levels -- but it is not based upon objective

medical findings. Although Claimant's blood pressure was elevated at 156/85 when he arrived at the hospital, it was not shown via the evidence that this reading was in effect prior to him experiencing chest pain on the treadmill as opposed to the traumatic experience of being in the hospital for a heart attack. Even if the doctor's theory is correct, Dr. Dietzius admitted that it was possible that either work stress or non-work stress could have resulted in high blood pressure on March 1, 2016 triggering Claimants' LAD to rupture. Thus, the Legal Presumption has not been sufficiently rebutted.

9. Based upon the foregoing, the undersigned finds that the Claimant's CAD is compensable. Accordingly, authorization of an appointment with cardiologist is awarded.

10. The attorney for the Claimant has performed a valuable service for his/her client and is entitled to reimbursement of costs of litigation as well as 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.

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

1. The claims for compensability, authorized medical care with a cardiologist are hereby **GRANTED**.

2. The claims for costs of litigation and entitlement to reasonable attorney fees at the expense of the Employer/Carrier are hereby **GRANTED**. Jurisdiction is reserved to determine the amount of either, or both, if the parties are unable to agree.

DONE AND SERVED this 10th day of August, 2017, in Jacksonville, Duval County, Florida.

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