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

Cecil Matthews,
Employee/Claimant,

vs.

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

OJCC Case No. 14-008786WRH

Accident date: 2/27/2014

Judge: William R. Holley

FINAL MERITS HEARING ORDER

THIS CAUSE came on for final merits hearing before the undersigned Judge of Compensation Claims on March 9, 2017. The Claimant, Cecil Matthews, was present and was represented by John J. Rahaim, II, Esquire and Amie DeGuzman, Esquire. The employer, City of Jacksonville, and the carrier/servicing agent, City of Jacksonville Risk Management, were represented by Michael J. Arington, Esquire and Alex Makofka, 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 17, 2014. All evidence was received and the record was closed on March 9, 2017.

I. ISSUES:

The Claimant sought the following benefits:

1. Authorization of and an appointment with a board certified cardiologist
2. Compensability of Coronary Artery Disease ("CAD")
3. Cost and Attorney's Fees

II. EMPLOYER/CARRIER'S DEFENSES

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

1. Claimant's CAD resulted from non-occupational causes. Reverse presumption.[1]

2. 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 (and was accepted under a 120 day letter that was later denied.) 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.

[1] The Employer/Carrier also requested that the phrase "or from Claimant's departure from a prescribed course of medical treatment that increased the need for further treatment, increased an existing disability, or resulted in a new disability" be included as a defense. The Claimant objected to including this defense on the grounds is was not listed in the Uniform Pre Trial Stipulation ("UPTS"). After reviewing the UPTS, the undersigned concurred and sustained the objection based upon due process and lack of proper notice grounds.

8. The following doctors or medical providers are authorized doctors: Treatment was provided during a 120 day pay and investigate period which ended on May 12, 2014. Dr. Harold Dietzius was authorized during the 120 day period. Dr. Harold was the Employer/carrier's IME. Dr. Patrick Mathias is the Clmt's IME. Dr. Ramon Costello was appointed by the undersigned JCC as the EMA.

9. The following body parts/conditions are in dispute: Coronary Artery Disease ("CAD")

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

11. The Employer/Carrier agrees the Claimant meets the four requirements to apply the statutory presumption. Claimant was a certified law enforcement officer. CAD is a covered condition. The Claimant was disabled during the 3 vessel bypass graft procedure. Claimant's pre-employment physical did not reveal evidence of CAD.

12. Claimant has a history 44 year of smoking 1 pack per day and the Claimant had a 3 year history of dyslipidemia.

13. Per the Amended Uniform Pre Trial Stipulation [D. 19] e-filed October 9, 2014, the Claimant is not pursuing a hypertension claim.

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 April 17, 2014. [D. 1]

2. Uniform Statewide Pretrial Stipulation e-filed September 5, 2014. [D. 13]

3. Pretrial Order entered September 5, 2014. [D. 14]

4. Composite: Notice of Conflict e-filed October 26, 2015. [D 48]; Order Appointing an Expert Medical Advisor March 14, 2016 [D. 54]; Supplemental Order Regarding EMA Appointment August 9, 2016. [D 57]; EMA Report e-filed December 2, 2016 [63];

5. Claimant's Trial Statement or Brief (for argument only) e-filed March 7, 2017. [D. 70]

6. Employer/Carrier's Trial Statement or Brief (for argument only) e-filed March 7, 2017. [D. 71].

7. Deposition transcript and exhibits of the February 9, 2017 deposition of Dr. Ramon Castello, EMA. [D. 69]

Claimant's Exhibits:

1. Deposition transcript of Dr. Mathias and exhibits e-filed October 15, 2015. [D. 40-43.]

Employer/Carrier's Exhibits:

1. Deposition transcript and exhibits of the May 5, 2015 deposition taken of Dr. Harold Dietzius e-filed October 23, 2015. [D. 45]

2. Claimant's deposition transcript for impeachment and/or rebuttal purposes. E-filed October 23, 2015 [D. 46]

3. Deposition transcript and exhibits of the March 1, 2017 deposition taken of Dr. Harold Dietzius. [D. 68]

4. Composite of medical records e-filed March 7, 2017. [D. 71]

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 63 year old corrections officer with the Jacksonville Sheriff's Office ("JSO" or "Employer.") The Claimant was employed in this capacity with the Employer for 23 years. At the time of his hiring, the Claimant passed his physical examination and did not have any medical conditions. He also was not taking any medications. There was evidence that the Claimant had been smoking cigarettes as of the age of 16 years old. For most of this time employed, the Claimant was assigned to an area where high profile inmates were confined at the Duval County Pre-trial detention facility/jail. His job included performing security rounds in open jail dorms, responding to emergencies and breaking up fights between inmates. He credibly described his job as being very stressful despite the training and tools provided by the Employer. The Claimant worked the night shift for 18 to 19 years during his employment.

3. On or about February 27, 2014, the Claimant had to undergo a coronary artery bypass graft (also known as a "triple bypass") and was out of work for an extended time. Just prior to this procedure, the Claimant had a positive stress test and underwent a heart catheterization where he was found to have severe left main stenosis in the area of 99% blockage. The medical reports from St. Vincent's cardiology during that timeframe indicated that Claimant had dyslipidemia but was stable on a statin. The Claimant filed a claim under workers compensation and the Employer elected to authorize benefits under the 120 day pay and investigate provision. The Employer later denied the claim via a notice of denial dated May 12, 2014.

4. The Claimant initially treated with cardiologist Dr. Harold Dietzius as an authorized provider until the Notice of Denial was filed. Afterward, the Employer/Carrier retained Dr. Dietzius as an IME. The doctor ultimately testified that the cause of Claimant's CAD was the combination of the Claimant's 44 year, one pack-per-day history of smoking cigarettes, his age, chronic dyslipidemia and family history. In fact, Dr. Dietzius testified that the smoking alone was the cause that was more than 50 percent responsible for the triple bypass incident whereas the other risk factors only made the percentage worse but he did not specify further as to actual percentages. He based this opinion on epidemiological studies supporting the premise that smoking increases the probability of CAD, risk of calcium around the heart arteries and other effects on the vascular system. The doctor explained that smoking has an acute effect with constriction of the arteries that is compounded with age over time. This chronic constriction in turn leads to increased susceptibility to plaque formation. Dr. Dietzius further explained that hyperlipidemia can cause plaques as well when cholesterol sticks to a blood vessel wall and blocks blood flow or grows outward. The doctor performed his own calculator operation (called a TIMI – acronym for name not specified) and came up with a 20% risk of CAD (or worsening thereof) within ten years after plugging in Claimant's tobacco history, age (over 55 years old), gender (male), and elevated cholesterol.[2] The doctor was unable to opine what part smoking might have contributed to Claimants' dyslipidemia. He also testified that he did not look at the Claimant's cholesterol studies to see what the history or progression of the levels were other than some records starting in January 17, 2011 where the Claimant was prescribed Zocor and on June 13, 2011 where the Claimant indicated he had come off Zocor for about a month. As to actual cholesterol levels, the doctor noted that his records only included actual lipid/cholesterol panel levels on the date of the accident, August 2013 and January 2015. In each of those cases, the levels were within or less than recommended numbers for a person with CAD. Dr. Dietzius admitted that not everyone who smokes or who has high cholesterol ends up with CAD and or bypasses. He also agreed that people can suffer CAD who do not smoke or have any risk factors. The doctor was asked if the Claimant would have been as likely to develop CAD if he had not

[2] The doctor noted there were around 40 calculator type studies in existence now that were similar to the Framingham Risk Score which had been used for many years.

smoked at all. The response was that he could not say and that there was no way of knowing whether or not the Claimant would have been predisposed to developing CAD during his lifetime.[3] Finally, the doctor noted "[i]n my opinion, a risk factor, if you have it and you develop the disease, it is the cause."

5.. The Claimant underwent a cardiologist IME with Dr. Patrick Matthias. The doctor described Claimant's bypass surgery as a result of the critical narrowing of the left main coronary artery (also known as a widow maker). [4] The development of this narrowing occurs either over time due to plaque formation or due to an acute plaque rupture such that a patient can have a completely normal stress test just days before. The Claimant provided medical history to the doctor included 40 years of smoking one pack a day and an elevated cholesterol diagnosis in 2011. The doctor noted several risk factors including smoking, dyslipidemia, family history, and psychosocial stress from Claimant working the night shift for 19 years. The doctor agreed that cigarette smoking was undoubtedly a significant risk factor for the development of CAD. However, the doctor opined there was not a duration or volume of smoking that a person reaches a threshold where it becomes a cause. Rather, such data only impacted an increase of probability of the development of CAD. The doctor was not able to say that smoking was the strongest risk factor or to "arrange a hierarchy" for any of the risk factors because the connection between risk factors and the development of CAD was not known. As to the night shift work, the doctor indicated there was epidemiological evidence that night workers had a higher incidence of heart disease. Dr. Matthias further stated that "… the effects of stress, grief, and other emotions on the incidence of coronary artery disease is something that has only been looked into in the last 10 or 15 years, and some of the findings are striking." When asked to assign a hierarchy of risk factors between the history of smoking and working the night shift for 19 years, the doctor indicated that he did not know the answer and did not believe anyone would know the answer. In essence, the

[3] Dr. Dietzius further commented on not being able to determine this answer "unless [the Claimant] had a twin that didn't smoke and you're able to do some studies."

[4] The doctor advised that an artery from inside of Claimant's chest was plugged into the left anterior descending ("LAD") coronary heart, which is the artery in the front of the heart. A vein was then taken from his leg and plugged into the aorta with the other end into the artery in the back of the heart (circumflex) which was beyond the blockage, in effect, bypassing the blockage. This procedure was also done in the right coronary artery and in a third location. The Claimant also had subsequent treatment done for peripheral vascular disease but this condition is not being sought as an issue for adjudication.

doctor's opinion was that the cause of Claimant's CAD was unknown and could not be determined.

6. On October 26, 2015, the Claimant filed a Notice of Conflict regarding the conflict of medical opinions between Dr. Mathias and Dr. Dietzius which was later deemed to require the appointment of an EMA. Dr. Ramon Castello was appointed to serve as the EMA. The question posed to the EMA was "[w]ithin a reasonable degree of medical certainty, what was the cause or condition, or combination of causes or conditions, of Cecil Matthews coronary artery disease that resulted in his single vessel bypass graft on February 27, 2014."

7. Dr. Castello performed an EMA evaluation on the Claimant on October 21, 2016 and an EMA report was generated. The doctor reported that the Claimant did not have any heart condition when he started working as a correction officer in 1994. The report indicated that the Claimant did not have a history of hypertension, diabetes mellitus or dyslipidemia (which was an error corrected later in the EMA report and the doctor's deposition). Additionally, the EMA report acknowledged the other doctors' opinions as to Claimant's dyslipidemia being a risk factor or cause and Dr. Mathias's opinion as to risk factors of Claimants' stressful occupation. The doctor noted that the Claimant reported smoking a pack of cigarettes a day and that the Claimant's father had passed at the age of 60 for unknown reasons but possibly due to a myocardial infarction. At the end of the report, the doctor mentioned that the Claimant had been smoking for 44 years. The EMA doctor further commented and agreed that smoking and dyslipidemia were risk factors. However, the doctor opined that risk factors only give a "probability" of disease that is based upon the end results of a population of individuals contracting the condition. Dr. Castello agreed that there was a cumulative effect that increases the probability of the development of the disease where there are more risk factors present. The doctor opined that the "best approximation to causation" was to assess the probability by utilizing "calculators of risk" such as the Framingham score or the ASCVD calculator which was an application on his cell phone. In plugging in the applicable risk factors such as smoking, high cholesterol and family history, the doctor noted that the probability of Claimant developing cardiovascular disease in 10 years was only 10%. The EMA's ultimate determination as to

causation was that the Claimant's CAD condition could not be explained on risk factors alone especially when considering the results of the calculator.

In deposition, the doctor maintained his above opinions regarding causation with slight modifications. The doctor agreed that cigarette smoking can have significant negative effects on the coronary arteries (similar to effects from other health issues such as diabetes, cholesterol and a combination thereof) including plague disposition and or plague rupture. The doctor affirmed that there are hundreds of risk factors but four or five such as smoking and high cholesterol were considered major risk factors. He also agreed that Claimant's smoking and high cholesterol contributed to the CAD. But the doctor also credibly explained that there is not a medical way of assigning percentage numbers of different risk factors to determine causation other than to possibly use a probability calculator.[5] In the Claimant's case, the calculator determined only a 10% probability which meant to Dr. Castello that the rest of the outstanding probability was based upon random or unknown factors. In reviewing the totality of the doctor's opinion, the undersigned found that Dr. Castello's opinion on the inability to determine causation would have been the same whether a calculator was utilized or not.

8. The parties have stipulated that the Claimant meets the criteria for the legal presumption as established by F.S. 112.18. The primary determination is whether the Employer/Carrier is able to rebut the presumption such that his CAD condition should not be presumed accidental and/or in the line of duty. The Employer/Carrier asserts that there is competent substantial evidence (as well as clear and convincing evidence) of a non-occupational cause of the CAD. See Punsky v. Clay Sheriff's Office, 18 So. 3d 577 (Fla. 1st DCA 2009). The burden of proof rests on the Employer/Carrier and requires medical evidence. Scherer v. Volusia County Dept. of Corrections, 171 So. 2d 135 (Fla. 1st DCA 2015); Fuller v. Okaloosa Corr. Inst., 22 So. 3d 803 (Fla. 1st DCA 2009)(requiring the employer to disprove occupational causation with medical evidence to rebut the presumption.)

[5] The E/C argued during closing that the cell phone application ("app") should not be deemed reliable as it is unknown what data was plugged in, who developed the app, or the methodology by which the app calculated the odds. This argument was considered when evaluating the weight of the evidence in reaching the holding herein but the "big picture" as to the difficulties in assigning percentages overall as indicated by the EMA was found to be conclusively persuasive. Thus, the phone app was deemed to be a supplemental basis upon which the EMA's ultimate opinion was founded.

9. The above burden of proof must also be analyzed in conjunction with the applicable law where an EMA has provided a medical opinion. The opinion of an EMA is "presumed to be correct unless there is clear and convincing evidence to the contrary..." Section 440.13(9)(c), Fla. Stat. (2009). Clear and convincing evidence must be of a quality and character so as to produce in the JCC's mind a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to defeat the conclusive presumption of the EMA opinion. See Walgreen Co. v. Carver, 770 So.2d 172 (Fla. 1st DCA 2000) and the cases cited therein. Furthermore, the opinion of the EMA shall be admitted into evidence. See §440.25(4)(d), Fla. Stat. (2008). In Mobile Medical Industrials v. Quinn, 985 So.2d 33, 36 (Fla. 1st DCA 2008), the First DCA made it clear that an EMA's opinion is presumptively correct unless the Judge of Compensation Claims finds and articulates clear and convincing evidence to the contrary. Additionally, the opinion of the EMA doctor has "nearly conclusive effect." Pierre v. Handi Van, Inc., 717 So.2d 1115 (Fla. 14 DCA 1998).

10. In reviewing the totality of the evidence as outlined earlier herein this Order, the Employer/Carrier has not presented sufficient evidence (either using a standard of CSE, preponderance of the evidence or clear and convincing) based upon objective medical findings found through physical examination and/or diagnostic testing within a reasonable degree of medical certainty of a specific non-occupational cause (or combination thereof) for Claimant's CAD condition. Moreover, the Employer/Carrier has not sufficiently established facts or objective medical evidence to overcome the presumption of correctness of the EMA's opinion. Dr. Dietzius' opinions that risk factors conflate to causes was not of a quality and character so as to produce in the undersigned judge's mind a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to overcome the EMA presumption of correctness. Even if Dr. Dietzius' opinions were deemed to constitute competent substantial evidence regarding causation, the undersigned finds that Dr. Castello's and Dr. Mathias' opinions to be more persuasive as to the inability to determine causation especially when considering that Claimant's high stress night shift job was not appropriately considered or weighed in Dr. Dietzius' opinion. Therefore, the F.S. 112.18 legal presumption has not been rebutted and compensability of CAD

has been established. Accordingly, the Claimant is entitled to medical care by an authorized cardiologist as requested.

11. The attorneys for the Claimant have 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 of CAD and authorized medical care with a board certified cardiologist is hereby granted.

2. 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

DONE AND SERVED this 29th day of March, 2017, in Jacksonville, Duval County, Florida.

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