

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FT. LAUDERDALE DISTRICT OFFICE

Fredrick Hall,
Employee/Claimant,

OJCC Case No. 17-009465GBH

vs.

Accident date: 11/9/2016

Broward County Fire Rescue/Gallagher
Bassett Services, Inc.,
Employer/Carrier/Service Agent.

Judge: Geraldine B. Hogan

FINAL COMPENSATION ORDER

Introduction

This matter came before the undersigned Judge of Compensation Claims on February 14, 2018, regarding the Petition for Benefits (PFB) filed on April 21, 2017. Claimant requested compensability of disabling arterial and cardiovascular hypertension and/or heart disease pursuant to Section 112.18(1) Florida Statutes. It was undisputed that the Claimant worked for the Employer as a firefighter and was diagnosed with hypertension. It was also undisputed that his pre-employment physical did not reveal hypertension, permitting an inference that his hypertension arose during the course of employment¹. The primary issue was whether the diagnosed condition resulted in disability. For reasons set forth below I find that the Claimant met the disability requirement of Sec. 112.18(1) (a) Fla. Stat. (2011).

Pretrial Stipulations:

1. The Judge of Compensation Claims has jurisdiction over the parties and subject matter.
2. Venue of the claim is in Broward County.
3. There was an employer/employee relationship on the date of accident.
4. Workers' Compensation insurance coverage on date of accident.

Claims Listed in the Pretrial Stipulation²:

¹ *Rocha v. City of Tampa*, 100 So. 3d138, 139 (Fla. 1st DCA 2012)

² Claimant requested Temporary Total Disability Benefits and Temporary Partial Disability Benefits from 11/9/2016 in the Pretrial Stipulation. He withdrew these claims at final hearing.

1. Medical Authorization: Authorization for medical care and treatment with a cardiologist.
2. Compensability: Compensability of disabling arterial and cardiovascular hypertension and/or heart disease pursuant to Section 112.18(1) Florida Statutes.
3. Penalties and Interest: Penalties and interest pursuant to Section 440.20(6)-(8), Florida Statutes, or as otherwise provided by law. Reasonable costs pursuant to Section 440.34 Florida Statutes, or as otherwise provided by law.
4. Attorney Fees: Attorney Fees pursuant to Section 440.34, Florida Statutes or as otherwise provided by law.

Defenses Listed in the Pretrial Stipulation:

1. All benefits requested are denied pursuant to the Notice of Denial filed on March 7, 2017.
2. The Employee did not sustain a compensable accident/injury arising out of his employment.
3. The Employee's condition is personal to him and not causally related to his employment.
4. The Employee does not meet the criteria for a compensable claim under F.S. 112.18.
5. No medical evidence to support the claim for TTD/TPD benefits.
6. No medical evidence to support the claim for compensability of HTN and/or heart disease.
7. No PICA due or owing

Findings of Fact and Conclusions of Law:

1. On November 9, 2016 Claimant, a lieutenant for Broward County Fire Rescue, underwent his annual physical examination with Dr. Rene Casanova at Helix Urgent Care Center. According to the Claimant's testimony, his blood pressure was high. The medical records of Dr. Casanova noted that the Claimant's initial blood pressure reading on November 9th was 149/101. A repeat blood pressure reading was 153/94. The Claimant testified that he also had symptoms of high blood pressure that included headache and dizziness.
2. The Claimant testified that Dr. Casanova asked if he wanted to go to the hospital. The

Claimant contacted his battalion chief who sent fire rescue to transport the Claimant to the emergency room at Boca Community Hospital (a.k.a. Boca Regional Hospital). The Claimant testified that at the emergency room the medical providers ran tests, including an EKG. He further stated that he was treated with 25 mg of Losartan. According to the Claimant's testimony, he was released from the ER after the blood pressure medication started to lower his blood pressure. After his discharge from the ER the Claimant called his battalion chief who told him to take off for the rest of the day. He was scheduled off the following day and the third day he returned to work. On his day off he returned to Dr. Casanova and received a prescription for hypertension medication. The Claimant testified that he continues to take medication to control his hypertension.

3. According to the Claimant's testimony Dr. Casanova released him to full duty work. He was at the emergency room for approximately two and an half hours before he was released to full duty work. The Claimant agreed that the only time missed from work as a result of hypertension was on the day of his annual physical when his battalion chief told him to go to the emergency room and to take the rest of the day off work.
4. During the Claimant's deposition he testified that his blood pressure was gradually getting higher and higher during the three years prior to his November 9, 2016 physical. Following his physical in November of 2016, he saw Dr. Perloff through workers' compensation. Dr. Perloff released him to return to work full-duty without any work restrictions. The Claimant testified that he takes 50 milligrams of Losartan, currently prescribed by Dr. John Sortino.
5. **Jacqueline Perez**, the claims adjuster, testified that, according to her knowledge, the Claimant was diagnosed with hypertension and did not miss any time from work. A Notice of Injury was electronically filed by Broward Sheriff's Office (BSO) on November 9, 2016. E/C asserted that Dr. David Perloff, a board certified cardiologist, was authorized to evaluate and treat the Claimant during the 120-day investigatory period. The adjuster sent Dr. Perloff medical records to review. According to the adjuster's testimony, Dr. Perloff opined that the Claimant only met 3 of the 4 elements needed to establish compensability under the presumption. The claim was denied on March 7, 2017.
6. A report from Dr. Perloff indicated that he initially evaluated the Claimant on November 16, 2016. His diagnoses included hypertension and he prescribed 50mg of Losartan. On 12/20/16 Dr. Perloff noted that, "Apparently, this patient presented on December 9, 2016 to Boca Raton Regional Hospital with chief complaint of hypertension and headaches." Although Dr. Perloff indicated that the visit to Boca Raton Regional Hospital was on December 9, 2016, apparently he was referring to the November 9, 2016 visit. Dr. Perloff noted that he did not have evidence from the records reviewed that the Claimant was restricted from duty in any way either by Helix Urgent Care or Boca Raton Regional Hospital.
7. Dr. Perloff completed a questionnaire on March 5, 2017. He noted that he did not receive

a report of the Claimant's pre-employment physical. According to this questionnaire the Claimant was suffering from a form of heart related disease or hypertension. Dr. Perloff noted that the Claimant did not sustain any form of disability as a result of the industrial injury of November 9, 2016. He opined that the Claimant's present medical condition was not causally related to the Claimant's employment. He specifically wrote, "He only meets 3 of the 4 elements for the presumption."

8. The deposition of Dr. Perloff was taken on November 21, 2017. He stated that his assistant initially took the Claimant's blood pressure on November 16, 2016 and it was quite elevated, **136/104**. Dr. Perloff retook the Claimant's blood pressure and it was **136/92**. According to Dr. Perloff, the Claimant had not started taking the Losartan previously prescribed at Helix [by Dr. Casanova]. The Claimant advised Dr. Perloff that he had been monitoring his own blood pressure and that his blood pressure was elevated. Dr. Perloff stated that the plan was to have the Claimant start the Losartan, 50 milligrams daily, monitor his blood pressure and come back in two weeks. He did not assign work restrictions to the Claimant during the initial visit.
9. On December 20, 2016 the Claimant's initial blood pressure reading was **142/100**. Dr. Perloff rechecked it and it was **136/92**. The Claimant brought in home monitoring records and they indicated that the Claimant's blood pressure was well controlled. According to Dr. Perloff's testimony the Claimant was on a full duty work status on November 16, 2016 and December 20, 2016. He did not evaluate the Claimant after December 20, 2016.
10. Dr. Perloff testified that since completing the March 5, 2017 questionnaire he reviewed the NFPA 1582 guidelines. He recognized that somewhere around May or June of 2017 that the guidelines changed. He testified that the guidelines [for disability] went from 180/100 to 160/100³. Dr. Perloff testified that his opinion probably would change, given the fact that the Claimant had several readings about the 160/90 range. However, he agreed that when he completed the questionnaire his opinion was that the Claimant did not sustain any form of disability as a result of the November 9, [2016] date of accident. He also agreed that the medical records reviewed did not indicate that the Claimant was taken off work or that he had work restrictions assigned by any of the doctors. Dr. Perloff also testified that he never placed any work restrictions on the Claimant when he evaluated him.
11. Dr. Perloff briefly discussed the ACCHA guidelines. According to his testimony, one of the things that the ACCHA did was to better define how blood pressure should be managed and painstakingly defined it. He indicated that the ACHHA did not recommend taking a single isolated value in defining high blood pressure; but to take two or three measurements and average them. However, Dr. Perloff agreed that when the Claimant's blood pressure was taken at his office one reading would have been considered disabling based on the guidelines. He also agreed that he retook the Claimant's blood pressure and

³ Dr. Perloff initially testified that the new guideline recommendation for disability was 160/90. He later corrected it to 160/100.

it was fine and the Claimant was on a full-duty work status.

12. Dr. Perloff was specifically asked if his opinion regarding the Claimant's disability status on the date of accident changed from the time he completed the questionnaire to the time of his deposition. He stated, "So what I am going to say is the guidelines recommend restrictions ... at 160 or above systolic, at 100 or above diastolic. And I can say that he was there at one reading. I don't have data – I mean, I think it's sort of a legal question as to disability. What I can tell you is that he did seem to meet that criteria." (Joint Exhibit 2 page 19:4-10)
13. Dr. Perloff explained that 160/100 was considered stage two hypertension. The Claimant had one reading, **161/98**, that exceeded the new guideline. He further stated that the guidelines recommend restrictions at or above 160 systolic and at or above 100 diastolic. Dr. Perloff stated that the Claimant was there at one reading. He further testified that if the systolic is 160 or above **or** the diastolic is at or above 100, disability is recommended.
14. Dr. Perloff testified that the Claimant was given 25 milligrams of Losartan at Boca Regional and that was considered medical treatment. He did not recall how long the Claimant was at Boca Regional, but agreed that it was a couple of hours. He agreed that while the Claimant was at the hospital he was not able to perform his duties as a firefighter.
15. Claimant designated **Dr. Steven Borzak** as his independent medical examiner. E/C objected to the admissibility of Dr. Borzak's opinions because Dr. Borzak only conducted a medical records review without performing a physical examination. Sec. 440.13(1) (j) Fla. Stat. (2015) defines Independent Medical Examination as an objective evaluation of the injured employee's medical condition, including, but not limited to, impairment or work status, performed by a physician or an expert medical advisor at the request of a party, a judge of compensation claims, or the department to assist in the resolution of a dispute arising under this chapter. E/C's objection was addressed by the First District in *Steinberg v. City of Tallahassee/City of Tallahassee Risk Management*, 186 So. 3d 61 (Fla. 1st DCA 2016). The court held that nothing in the definition of "independent medical examination" precludes a records review IME. *Id.* at 63. Therefore, E/C's objection to the admissibility of Dr. Borzak's opinions is overruled.
16. Dr. Borzak testified that he is board certified in internal medicine and cardiovascular disease. He reviewed medical records from Dr. Casanova, Helix Urgent Care, Boca Raton Hospital, Dr. El Sanadi, Minor Emergi Center, SKB, and Dr. Perloff. He testified that the Claimant's blood pressure was noted as elevated during an annual examination as early as January 10, 2010, without a diagnosis of hypertension.
17. According to Dr. Borzak's testimony there was a trend of the Claimant's blood pressure going up and noted as abnormal. Then on November 9, 2016, he was not sure how it happened exactly, the Claimant ended up in the emergency department with a more marked elevation of his blood pressure and was treated with medication at that time. Dr.

Borzak testified that he would not have sent the Claimant to the emergency room on November 9, 2016, but he would have initiated the treatment at that point.

18. Dr. Borzak stated that the Claimant was first treated for hypertension on November 9, 2016 in the emergency department. Treatment included medication, Losartan, and the Claimant was discharged with a prescription. Dr. Borzak explained that Losartan was a hypertensive medication designed to lower blood pressure.
19. Dr. Borzak was asked, "...during those hours that he was at the hospital, was [the Claimant] able to perform his essential job duties as a fire fighter?" Dr. Borzak stated, "Not while he[was] a patient in the emergency department." Dr. Borzak was then asked, "So while he was in the hospital on November 9, 2016, was he incapacitated due to his hypertension?" Dr. Borzak stated, "Yes." Dr. Borzak was then asked, "And would he have been able to safely perform his job duties as a fire fighter with the elevated readings?" Dr. Borzak testified that he would have disabled the Claimant at that time.
20. Dr. Borzak was then asked, "Was [the Claimant] disabled ... on November 9, 2016?" E/C objected and asserted that the questioned called for a legal conclusion. I overrule this objection. (Claimant's Exhibit #2 pg. 12:1-5) Dr. Borzak answered, "Yes." He explained his understanding of the term disability as "unable to perform one's job."
21. According to Dr. Borzak's review of Dr. Casanova's records two blood pressure readings were recorded, 149/101 and 153/94. There were three readings from the emergency room, 161/98, 154/97 and 156/96. Dr. Borzak testified that Dr. Casanova released the Claimant to full duty work on November 9, 2016 and his report did not note a referral to the emergency department. Dr. Borzak did not see any restrictions placed on the Claimant's ability to work in the medical records from the emergency department, from Dr. Casanova or Dr. Perloff.
22. When questioned about the NFPA guidelines, Dr. Borzak stated, "We can say, is he at the boundary? Is he over the boundary? Was he a little over the boundary?" He went on to say, "... he is really right there. I would give this Claimant the benefit of the doubt and err on the side of caution and safety by issuing the treatment and impairing him until ... better blood pressure control is achieved."
23. Dr. Borzak noted in his report that on 11/30/2016 Dr. Casanova wrote to Chief Nugent that the Claimant was seen on 11/9/2016 and was found to be fit for duty. A copy of the 11/3/2016 correspondence was included with Claimant's Exhibit #2. Also included in Claimant's Exhibit #2 was a correspondence addressed to the Claimant from Dr. Casanova. He advised the Claimant that he sent a letter to District Chief Michael Nugent notifying him that the Claimant was fit for duty. This correspondence noted that,

"The following were noted during your physical:

- Physical Exam –Normal
- Labs Results – Elevated Cholesterol recommend following up with primary

- care physician
- X-Ray Results – Normal.

24. There was no mention of an elevated blood pressure in the correspondences to Chief Nugent and the Claimant.
25. Dr. Borzak discussed the NFPA guidelines during his deposition. He stated that the cutoff is vague as to whether they are treating chronic or acute hypertension. He testified that the cutoff where they become concerned about the ability to perform job duties is 160/100. He stated, “That was really right where the Claimant was.”
26. Dr. Borzak opined that future treatment for the Claimant included, but was not limited to, ongoing medications, periodic laboratory tests and visits with a physician, “perhaps including a cardiologist three or four times a year.”
27. Sec. 112.18(1)(a) Fla. Stat. (2011) provides, in part, that:

Any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter ... caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter ... must have successfully passed a physical examination upon entering into any such service as a firefighter ..., which examination failed to reveal any evidence of any such condition.
28. It was undisputed that the Claimant was a firefighter and that he was diagnosed with hypertension. The parties conceded that the Claimant successfully passed a physical examination upon entering into service as a firefighter, which examination failed to reveal any evidence of hypertension. The only issue was whether the condition of hypertension resulted in total or partial disability. The presumption is only applicable when the claimant’s tuberculosis, heart disease, or hypertension results in total or partial disability or death. *Bivens v. City of Lakeland*, 993 So. 2d 1100, 1102 (Fla. 1st DCA 2008)
29. Sec. 440.02(13) defines “Disability” 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.
30. Determining whether a person is disabled for purposes of workers’ compensation turns upon the person’s capacity to earn income, not upon the employer’s decision to pay the injured person’s salary while he or she is incapacitated. *City of Mary Esther v. McArtor*, 902 So. 2d 942, 944 (Fla. 1st DCA 2005). In *City of Mary Esther v. McArtor* the claimant was hospitalized for cardiac complications and received his full salary during the hospitalization and recovery. The First District noted that there was no dispute that,

during the periods in question, the claimant was incapable of performing his duties as a fireman and therefore, did not have the actual capacity to earn his wages as a fireman. The court found that because the claimant was incapable of performing his duties as a fireman he met the definition of disabled. *Id.*

31. E/C asserted that there was no evidence that the Claimant sustained any disability, either totally or partially, as a result of his hypertension. E/C further asserted that the Claimant was never taken off work or assigned any work restrictions by Dr. Casanova, Boca Raton Regional Hospital or Dr. Perloff. E/C further asserted the Dr. Casanova never referred the Claimant to Boca Raton Regional Hospital. E/C also pointed out that Dr. Borzak, Claimant's IME, testified that he would not have referred the Claimant to an emergency room on November 9, 2016.
32. Dr. Borzak testified that he would not have sent the Claimant to the emergency room. However, he would have initiated treatment and impaired the Claimant until better blood pressure control was achieved. Although Dr. Perloff indicated in his written opinion that the Claimant did not meet the disability requirement of the presumption, he testified that that his opinion probably would change. Dr. Borzak and Dr. Perloff both testified that NFPA 1582 guidelines for disability were systolic at or above 160 and diastolic at or above 100. Dr. Perloff stated that the Claimant was there at one reading.
33. E/C denied compensability based on Dr. Perloff's opinion that the Claimant did not meet the disability requirement of the presumption. However, Dr. Perloff testified that his opinion regarding disability changed. His opinion was consistent with the opinion of Dr. Borzak regarding the NFPA 1582 disability guidelines. The Claimant was off work November 9, 2016 and November 10, 2016.
34. One of the cases relied on by E/C to support denial of compensability was *Jacksonville Sheriff's Office v. Shacklett*, 15 So. 3d 859 (Fla. 1st DCA 2009). In *Shacklett* the claimant was employed as a law enforcement officer. While engaged in a training exercise he began feeling ill and experienced chest pains. He was diagnosed with hypertension and advised to see a cardiologist. The claimant was out of work for three weeks. There was no written documentation establishing that the Claimant was taken out of work due to hypertension and the chest pain was found not to be cardiac-related. In reversing the JCC's finding of compensability, the First District found that missing several days of work due to medical appointments is not sufficient to demonstrate disability. *Id.* at 861. The court also noted that the records were silent as to whether Claimant's hypertension, as opposed to his report of chest pain, was the reason he was told not to return to work until being cleared by a cardiologist.
35. In *Shacklett* the court found that because the claimant was advised to see his primary doctor if he had any hypertension-related complaints, and he was released by the cardiologist with no restrictions, the most that can reasonably be said of the claimant's no-work status pending a cardiac evaluation is that it was for purely precautionary reasons unrelated to his hypertension. The court held that this was not sufficient to

establish disability for purposes of section 112.18(1) Fla. Stat. (2007). *Id.*

36. In the instant case, the Claimant was treated in the emergency department for hypertension. Dr. Borzak testified that the medication administered to the Claimant at the emergency department was to lower the Claimant's blood pressure. The testimony of Dr. Borzak and Dr. Perloff support a finding that the Claimant had blood pressure readings that met or exceeded the NFPA 1582 guidelines for disability. Considering the totality of the evidence, I find that the Claimant met the disability requirement of Sec. 112.18(1)(a) Fla. Stat. (2011).
37. Dr. Borzak was the only provider to address future medical treatment. He opined that future treatment for the Claimant included, but was not limited to, ongoing medications, periodic laboratory tests and visits with a physician, "perhaps including a cardiologist three or four times a year."
38. Claimant requested penalties and interest. However, Claimant withdrew his claims for TTD/TPD. Therefore, he is not entitled to penalties and interest on the remaining claims. *See Indrajit Smith v. General Conference of Seventh Day Adventist and National Union Fire Ins. Co. of Pittsburgh*, 535 So. 2d 611, 612 (Fla. 1st DCA 1988) (holding that the penalty provisions applicable to late payment of compensation did not apply to payments for medical services.)

WHEREFORE, it is ORDERED and ADJUDGED that,

1. The claim for authorization for medical care and treatment with a cardiologist is GRANTED.
2. The claim for compensability of disabling arterial and cardiovascular hypertension and/or heart disease pursuant to Section 112.18(1) Florida Statutes is GRANTED.
3. The claim for penalties and interest pursuant to Section 440.20(6)-(8), Florida Statutes, or as otherwise provided by law DENIED.
4. The claim for reasonable costs pursuant to Section 440.34 Florida Statutes or as otherwise provided by law is GRANTED.
5. The claim attorney's fees pursuant to Section 440.34 Fla. Stat., or as otherwise provided by law is GRANTED.

DONE AND SERVED this 15th day of March, 2018, in Lauderdale Lakes, Broward County, Florida.



Geraldine B. Hogan
Judge of Compensation Claims

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Appendix

Judge's Exhibits

1. Uniform Statewide Pretrial Stipulation
2. Petition for Benefits
3. Response to Petitions for Benefits

Joint Exhibits

1. Deposition Transcript of Jacqueline Perez with exhibits
2. Deposition Transcript of David Perloff, M.D. with exhibits

Claimant's Exhibits

1. Claimant's Trial Memorandum (Identification)
2. Deposition Transcript of Steven Borzak, M.D. with exhibits: Objection Overruled

E/C's Exhibits

1. E/C/SA's Trial Memorandum (Identification)
2. Order on E/C/SA's Unopposed Motion to Admit Medical Records with Medical Records (composite)
3. Deposition Transcript of Frederick Hall

Trial Witness:

1. Frederick Hall