STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ST. PETERSBURG DISTRICT OFFICE

Michael Stonelake,
Employee/Claimant,

vs.

City of Clearwater,
Employer,

City of Clearwater Risk Management Division,
Carrier/Servicing Agent.
_____/

OJCC Case No. 14-012844SLR

Accident date: 3/18/2014

Judge: Stephen L. Rosen

FINAL ORDER

This Cause came on for hearing before the undersigned Judge of Compensation Claims on March 24, 2015. The claimant, Michael Stonelake, was represented by Tonya A. Oliver, Esq. and George B. Cappy, Esq. The employer, City of Clearwater, self-insured, were represented by Mark E. Hungate, Esq.

For purposes of this order, the employee will be referred to as "employee" or "claimant". The employer/carrier will be referred to as "employer" or "carrier" or "employer/carrier".

This Final Order resolves the petitions for benefits filed June 6, 2014.

All evidence was received and the record was closed on March 24, 2015.

Claim was made for the following:

1. Compensability of heart disease in the form of arrhythmia or electrical issue of the heart. The self-insured employer objected to the narrowing of the issues from the original petition for benefits but I find that the purpose of the pretrial is to narrow the issues and claimant has specifically done so to limit the claim by specifically eliminating any claim for mitral valve prolapse. Objection overruled

2. Authorization of medical care and treatment with a cardiologist, a primary care physician or an internal medicine specialist.

3. Payment of the impairment benefits based on 35% impairment rating of the body as a whole based on the Florida Impairment Guides class 3 for arrhythmia or electrical issue of the heart pursuant to the opinion of the claimant's independent medical examiner, Dr. Mathias.

4. Penalties, interest, reimbursement of costs of litigation, and attorney's fees at the expense of the employer/carrier.

Affirmative Response to Defenses:

1. If the presumption applies, self-insured employer has failed to present competent evidence to rebut that presumption.

The claim was defended on the following grounds:

1. Dr. Mathias did not state an opinion on causation.

2. The presumption does not apply to this claimant.

3. If the claim is found to be compensable, the claimant reached maximum medical improvement on July 3, 2014 when he returned to full-time duty.

4. If the claim is found to be compensable, the employer contends that the heart conditions resulting in the permanent impairment rating were all pre-existing, personal and idiopathic and not the result of an accident/injury arising from in the course and scope of the claimant's employment.

5. Any alleged work accident is not the major contributing cause of the claimant's permanent impairment rating and no impairment benefits are payable.

6. Based on the claimant's limiting his claim to arrhythmia or electrical heart issue only, claimant is only entitled to 15% permanent impairment as a class II impairment under the Florida Impairment Guides.

7. Claimant knew or should have known of the applicability of the presumption or heart disease as early as February 2011 and therefore giving notice of injury on or about April 1, 2014 is untimely

8. Claimant is not entitled to penalties, interest, reimbursement of costs of litigation, or attorney's fees at the expense of the employer.

The parties entered in the following stipulations:

1. I have jurisdiction of the parties and the subject matter of this claim.

2. Venue lies in Pinellas County.

3. On the date of incident, there existed an employer/employee relationship between the claimant and the self-insured employer

4. The average weekly wage was $1,624.76 and the corresponding compensation rate is the maximum allowable for the date of incident at $827.00 per week.

5. On the date of accident, there was not a managed care arrangement in place.

6. The petitions for benefits and responses thereto were filed as noted elsewhere in this order.

7. There was timely notice of the final hearing given to the parties.

8. Maximum medical improvement was reached on July 3, 2014.

The following documents were offered into evidence:

Judge's Exhibits:

1. Petition for benefits, filed June 6, 2014.

2. Response to petition for benefits, filed June 19, 2014.

3. Mediation conference report, filed September 8, 2014.

4. Uniform pretrial stipulation form in order approving uniform pretrial stipulation form, filed September 26, 2014.

5. Petition for benefits, filed October 2, 2014.

6. Response to petition for benefits, filed October 10, 2014.

7. Mediation conference report, filed January 15, 2015.

8. Second uniform pretrial stipulation form and 2nd order approving uniform pretrial stipulation

form, filed February 13, 2015.

9. Final evidentiary order denying appointment of an expert medical advisor based on timeliness of the notice of conflict, entered March 18, 2015. All evidence made part of that evidentiary order shall be part of the record for this final hearing, although the parties have resubmitted all of that documentary evidence and it shall be listed later in this order.

10. Claimant's trial memorandum, with attached case law (for argument only).

11. Self-insured employer's trial memorandum, with any attachments.

Claimant's Exhibits:

1. Deposition of Patrick Mathias, M. D., taken January 21, 2015, with attachments.

Employer/Carrier's Exhibits:

1. Deposition of Brian Pierpont, M. D., taken January 21, 2015, with attachments.

2. Notices of denial, dated April 21, 2014, June 19, 2014, and October 7, 2014.

Joint Exhibits:

1. Deposition of the claimant, taken August 5, 2014, with attachments.

2. Deposition of Dr. Quick, M. D., taken March 11, 2015, with attachments.

3. Deposition of Dr. Klavens, M. D., taken March 13, 2015.

4. Claimant's attendance/payroll records.

5. Deposition of Syad Gilani, M. D., taken November 20, 2014, with attachments.

6. Deposition of Mahesh Amin, M. D., taken November 19, 2014, with attachments.

7. Deposition of Ralph Rophie, M. D., taken November 13, 2014, with attachments.

8. Claimant's pre-employment physical, dated December 20, 1989.

9. Clearwater care capital ATC records.

After reviewing all documentary evidence, hearing live testimony, and otherwise being fully apprised of the applicable case and statutory law, I find:

1. I have jurisdiction of the parties and the subject matter of this claim.

2. Venue lies in Pinellas County, Florida.

3. The stipulations of the parties are adopted and shall become part of the findings of facts herein.

4. The documentary exhibits offered by the parties are admitted into evidence and shall become a part of the record herein.

5. The claimant, Michael Stonelake, is currently employed as a detective by the City of Clearwater. He had a pre-employment physical in 1989 and began work with this employer in 1990. He has had various jobs with this employer in law enforcement and since 2002 has worked in the Crimes against Families and Children division. He was involved in a shooting on the job in 2001 and testied that event has had a stressful affect on him which is present today. He has worries about his job of being shot or stabbed.

6. The claimant testified to significant non-job related stresses including automobile accident injuring his wife and daughter and multiple criminal legal troubles with his son. However, I find that based on the medical evidence before me, there is no greater weight or preponderance of medical evidence presented that the claimant's stresses on and off the job had any causal relationship to his heart disease that is the subject of this claim.

7. In 2011, the claimant was surgically treated for prostate cancer and at that time was told that he had a heart murmur (claimant's testimony). He does not recall being told that there was any mitral valve prolapse at that time. There is no evidence of disability or treatment at that time, and I therefore reject the self-insured employers defense of notice based on claimant should have had knowledge of the presumption and/or heart disease at that time. There is no evidence of the disability prong being satisfied at that time and claimant could not have availed himself of the

presumption or claimed cardiac injury in 2011.

8. In February of 2014 the claimant sought treatment with Dr. Doan for palpitations. On or about March 18, 2014 the claimant was treated by Dr. Quick, a cardiologist, and he was assigned a Holter monitor for his heart. He was given medications to control his heart rate. At that point, he was also told that he had a mitral valve prolapse.

9. As of March 18, 2014 the records of the employer as well as evidence elicited on cross examination by the attorney for the self-insured employer shows that the claimant was on light duty until July 3, 2014. I accept the testimony of the claimant's independent medical examiner, Dr. Mathias, that it was appropriate for Detective Stonelake to be restricted from his full duties and responsibilities as a law enforcement officer during the time of March 18, 2014 through July 3, 2014 . While he was paid his regular salary and most likely handling his regular caseload, I accept the testimony of the claimant that he was restricted from going out into the field, carrying a weapon, and avoiding contact with people allegedly breaking the law in the field.

10. The employer/carrier denied compensability mainly on the grounds that the claimant did not meet the requirements of F. S. 112.18, known as The Heart-Lung Act. In order to prove entitlement to the statutory presumption found in this section, the claimant must prove four prongs:

A. That the claimant underwent a pre-employment physical that failed to reveal evidence of the claimant's protected condition.

B. That the claimant is a member of the protected class (i.e. firefighter, police officer, or correctional officer).

C. That the claimant developed a protected condition (i.e. hypertension, heart disease, or tuberculosis).

D. That the protected condition resulted in temporary, partial, or permanent disability or death.

11. Based on the evidence presented to me, it is clear that the claimant is a member of a protected class who underwent a pre-employment physical that failed to reveal evidence of heart

disease. I find that the claimant developed heart disease which resulted in a disability between the period of March 18, 2014 and July 3, 2014 when the claimant was restricted from all of his usual activities of police work. Therefore, I find that the presumption as it appears in F. S. 112.18 applies to this claimant.

12. The claimant is relying solely on the presumption; there is no claim for accident or occupational disease separate from the presumption.

13. The medical evidence is between the 2 independent medical examiners of the parties. Both Dr. Mathias and Dr. Pierpont are familiar to me as experts in presumption cases both from my own experience as having them testifying in cases assigned to me as well is reviewing cases of the appellate court and other Judges of Compensation Claims in Florida. I find that the self-insured employer's arguments regarding the weight to be given the opinions of Dr. Mathias to be of little significance based on the fact of his testimony being mostly as an independent examiner for claimants in presumption cases. The same could be said for the testimony of Dr. Pierpont in presumption cases but, again, the fact that Dr. Pierpont may testify mostly for employers and/or carriers in presumption cases is of little significance to me. I find both of these experts to be highly qualified in the area of internal medicine/cardiology regardless of who retains them as an expert in presumption cases.

14. The employer argues that the claimant's arrhythmia is in fact caused by the claimant's mitral valve prolapse/regurgitation which is a condition that naturally progresses due to myxomatous degeneration or fibro elastic deficiency, genetic conditions which have no occupational causation. Both independent medical examiners agree that there are no objective tests as to what establishes a mitral valve prolapse and no known cause to myxomatous appearing mitral valve leaflet.

15. Because it is the burden of the employer to present competent evidence to rebut the presumption, I find that the employer's attempted logical tracing of medical evidence through Dr. Pierpont that, because of the existence of various medical links, is not competent evidence to rebut the presumption. In fact, I find that Dr. Pierpont's candid testimony that atrial fibrillation

can be separated independently from mitral valve prolapse to be supportive of finding that the presumption applies in this case. It is the atrial fibrillation that is claimed as the heart disease by the claimant. Dr. Pierpont testified that there is no test or measure to indicate which individual is going to develop atrial fibrillation if they have mitral valve prolapse.

16. I find that because the presumption attaches to this claimant, the burden of major contributing cause has been satisfied without the need of the claimant to present additional evidence of medical causation. And because that presumption has not been rebutted by competent evidence, I further find that the claimant is entitled to treatment for his atrial fibrillation only by a cardiologist, primary care physician, or internal medicine specialist at the expense of the self-insured employer. I am specifically not awarding treatment for the mitral valve prolapse as it is not claimed at this time.

17. The parties stipulated that the claimant reached maximum medical improvement on July 3, 2014 and has returned to full-time duty since then. The claimant testifies that he does have some infrequent palpitations as documented by Dr. Mathias, but is not seeking any specific medical treatment. In fact, his testimony shows that he chooses not to go to the doctors or take medication if possible. It is significant that he canceled some scheduled medical appointments to attend independent medical examinations and other legal proceedings in this case.

18. Because the claimant has made claim only for arrhythmia, the overall permanent impairment ratings given by both independent medical examiners should not be assigned. Dr. Mathias felt that the claimant had a 35% permanent impairment as a class III arrhythmia according to the Florida Impairment Guides because he still has palpitations, although infrequently. He is able to lead an active life. However, the claimant did not complain of palpitations to Dr. Pierpont and appears to control his arrhythmia with medication and/or moderate dietary adjustments. There is no evidence that the claimant is unable to maintain his ordinary daily activities including employment activities. Dr. Pierpont felt that the claimant had a 15% class II impairment according to the Florida Impairment Guides. I accept the opinions of Dr. Pierpont over those of Dr. Mathias with regard to permanent impairment for arrhythmia, and assign the claimant a 15% permanent impairment of the body as a whole. Penalties and interest are due on all past payment

of indemnity for permanent impairment.

19. The attorneys for the claimant have performed a valuable service for their client and are entitled to attorney's fees at the expense of the employer/carrier as well as reimbursement of costs of litigation.

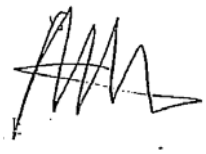
WHEREFORE, it is ordered that:

1. The self-insured employer shall provide the claimant with a cardiologist, primary care physician, or internal medicine specialists specifically for the care of cardiac arrhythmia only.

2. The self-insured employer shall pay the claimant 15% permanent impairment to the body as a whole as a result of the arrhythmia.

3. The self-insured employer shall pay the attorneys for the claimant attorney's fees for securing medical care for the claimant's arrhythmia, permanent impairment rating of 15% of the body as a whole, and establishing compensability, as well as reimbursement of costs of litigation. Jurisdiction is reserved to determine the quantum of either, or both, if the parties are unable to agree.

DONE AND ORDERED this 25th day of March, 2015, in St. Petersburg, Pinellas County, Florida.



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