

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
WEST PALM BEACH DISTRICT OFFICE

David Oxley,  
Employee/Claimant,

OJCC Case No. 14-021864MAD

Accident date: 8/3/2014

vs.

Judge: Mary A. D'Ambrosio

City of West Palm Beach/Corvel  
Corporation,  
Employer/Carrier/Servicing Agent.

/

FINAL COMPENSATION ORDER

AFTER PROPER NOTICE TO ALL PARTIES, a Final Merits Hearing was held on June 10, 2015. Present for the hearing were the Claimant, David Oxley along with Counsel for the Claimant, Tonya Anne Oliver, Esquire, and Counsel for the Employer/Carrier Micheal Edwards, Esquire.

The Petition for Benefits at issue was filed on September 22, 2014. Jurisdiction was reserved on Petition for Benefits filed on June 2, 2015 and June 9, 2015 as they have not been mediated and are therefore not ripe for Final Hearing.

CLAIMS

1. TTD/TPD benefits from 8/3/2014 to the present and continuing at correct comp rate; (Amended to TTD/TPD 8/3/14 – 10/9/14);
2. Authorization of medical care and treatment with a cardiologist, a PCP, or an internal medicine specialist for arterial and cardiovascular hypertension and/or heart disease;
3. Compensability of heart disease per 112.18(1), F.S;
4. Penalties, interest, cost and attorney's fees.

DEFENSES

1. Personal and pre-existing in nature and not work related;
2. No injury by accident in the course and scope of employment;
3. Condition not compensable under F.S. 112.18;

4. No TTD/TPD entitlement (clarified at hearing to: no lost wages. Claimant's salary continued to be paid.

#### AFFIRMATIVE DEFENSES

F.S.112.18 (1) (b) (1) (a) – Reverse Presumption that condition not incurred in the line of duty.

#### CLAIMANT'S RESPONSE TO AFFIRMATIVE DEFENSE

Employer/Carrier cannot rebut the Presumption with objective medical evidence as required in F.S. 440.151 for occupational disease.

#### STIPULATIONS MADE AT TIME OF HEARING

1. The Employer/Carrier withdraws its notice defense listed in the Pretrial Stipulation;
2. The parties stipulate to an average weekly wage (AWW) of \$1,581.17 pursuant to the wage statement;
3. The parties stipulate that the Claimant meets the requirements of F.S. 112.18 and the Presumption applies.

#### EXHIBITS

1. Pretrial Stipulation filed 2/6/15 (D#14), Employer/Carrier's Amendment filed 5/1/15 (D#20), Claimant's Objection filed 5/11/15 (D#21) and Evidentiary Order on Claimant's Objection (D#45) – Judge's Composite Exhibit #1;
2. Deposition of Leonard Pianko, M.D. with attachments (D#39, 40, 41) – Claimant's Composite Exhibit #1;
3. Deposition of Dr. Perloff, M.D. with attachments (D#27-35) – Employer/Carrier's Composite Exhibit#1;
4. Response to Petition for Benefits (D#5) – Employer/Carrier's Exhibit #2;
5. Prior Medical Records attached to Employer/Carrier's Pretrial Amendment (D#20) – Employer/Carrier's Composite #3;
6. Deposition of David Oxley (D#24) – Employer/Carrier's Exhibit #4;
7. Notice of Denial (D#25) – Employer/Carrier's Exhibit #5;

The Trial Memoranda of the parties were accepted as argument of counsel.

The Claimant, David Oxley, testified before me at the Final Hearing. No other live witnesses were presented.

## FINDINGS OF FACT

1. David Oxley, hereinafter also may be referred to as the “Claimant” is a fifty-six (56) year-old male at the time of hearing with a date of birth of September 28, 1958.
2. Officer Oxley has been employed with the City of West Palm Beach since January 11, 1988. Upon hire with the City of West Palm Beach and in compliance with Florida State Statute 943.13(5)(b), Officer Oxley underwent a pre-employment physical on December 10, 1987, which established no evidence of hypertension or heart disease, specifically, no evidence of coronary artery disease.
3. On August 3, 2014, Officer Oxley was working a regular shift on road patrol at the north end of the City. Officer Oxley had continuing chest discomfort and was admitted to the emergency room at St. Mary’s and began an initial cardiac work up. He was later transferred to Palm Beach Gardens.
4. Officer Oxley was diagnosed with a myocardial infarction (heart attack) and required the placement of a stent for coronary artery disease, a heart disease. He was out of work until October 9, 2014. While out of work, Officer Oxley utilized his sick and vacation accrued time.
5. Officer Oxley was unable to perform his job duties while he was treated for coronary artery disease. Upon his release from his physician, Officer Oxley resumed his duties as a law enforcement officer and continues in that capacity at present.
6. Officer Oxley has a prior history of coronary artery disease which began in 1999, 2000, and 2009, which was defined by Dr. Pianko as atherosclerosis, or a blockage of the heart. Officer Oxley’s heart disease began subsequent to his employment with the City of West Palm Beach Police Department.
7. Officer Oxley previously had smoked tobacco products; however quit the use of tobacco products in 2009.
8. The Claimant selected Dr. Leonard Pianko to conduct his Independent Medical Examination, which occurred on March 9, 2015. Dr. Pianko diagnosed Officer Oxley with the following conditions: coronary artery disease status post heart attack, status post cardiac stents, multiple stents and hypertension. Dr. Pianko describes coronary artery disease or atherosclerosis as a process of plaque formation or cholesterol deposition on the artery. Dr. Pianko testified as to the difference between risk factors and causation as relates to heart disease. He explained that risk factors do not specifically tell you anything in one individual person as there are some people who have no risk factors and develop heart disease. It is difficult to correlate the causation of atherosclerosis.

9. Dr. Pianko testified that he was able to identify cholesterol, smoking and hypertension as risk factors for Officer Oxley. Dr. Pianko indicated that there is no objective test that can be run to tell you that one of these specific risk factors, or a combination of these risk factors, caused Officer Oxley's heart disease, coronary artery disease.
10. Dr. Pianko testified that Officer Oxley also has essential hypertension for which there is no identifiable cause; however in order to treat his coronary artery disease, it is necessary to treat his hypertension.
11. Dr. Pianko confirmed that Officer Oxley was working the day of the incident and ultimately went to the hospital with unstable angina. Initially the q wave showed infarction, meaning Officer Oxley had a heart attack; a catheterization was performed which confirmed the blockage and a stent was placed. In addition, Dr. Pianko opined that following the implantation of the stent on August 3, 2014, it was reasonable for him to remain out of work through October 9, 2014 for recovery.
12. The Employer/Carrier selected David Perloff, M.D. to conduct an Independent Medical Evaluation. The evaluation occurred in February 11, 2015. Similar to Dr. Pianko, Dr. Perloff diagnosed Officer Oxley with coronary artery disease, hypertension, and hyperlipidemia.
13. Dr. Perloff confirmed that coronary artery disease, a narrowing of the coronary arteries, is a form of heart disease. Dr. Perloff testified that there is no objective medical evidence to establish that the Claimant's risk factors, or combination of risk factors, actually caused the inflammation or plaque in his case. Importantly, Dr. Perloff testified that there is no objective medical *test* to establish that any one risk factor, or the combination of risk factors, caused Officer Oxley's coronary artery disease.
14. Dr. Perloff confirmed that while the measure of Officer Oxley's smoking is not clear, he was of the impression that he smoked cigarettes or cigars at least intermittently. While Dr. Perloff confirms that smoking is a risk factor for coronary artery disease, Dr. Perloff testified there is no objective measurement or test to establish that his perceived continued, intermittent smoking caused or contributed to his August 3, 2014 need for treatment.

#### CONCLUSIONS OF LAW

1. I find that there is no dispute that the Claimant is entitled to the Presumption in Florida Statute section 112.18 as it relates to the coronary artery disease.
2. I find that the Presumption remains with the Claimant unless overcome by evidence of

sufficient weight to satisfy the trier of fact that the heart disease had a non industrial cause. Punsky v Clay County Sheriff's Office, 18 So.3d 577 (Fla. 1<sup>st</sup> DCA 2009).

3. As to the standard of proof, I find if the Claimant relies solely on the Presumption to prove compensability, the Employer/Carrier may prove non industrial causation by competent substantial evidence. Further, I find that if the Claimant offers competent medical evidence of occupational causation in addition to the Presumption the standard for the Employer/Carrier to rebut the Presumption is clear and convincing evidence. Caldwell v. Division of Retirement, 372 So2d 438 (Fla. 1979).
4. I find that the Claimant has not proven an occupational cause independent of the Presumption, therefore the Employer/Carrier's burden of proof to rebut the Presumption is competent substantial evidence. Non industrial causation may be demonstrated by a combination of wholly non-occupationally causes. Punsky v. Clay County Sheriff's Office, 18 So.3d 577 (Fla. 1<sup>st</sup> DCA 2009).
5. I find that the Employer/Carrier has not shown through competent substantial evidence that that cause of the Claimant's coronary artery disease is a combination of non-industrial factors.
6. I accept the Claimant's testimony that he has not smoked any tobacco products, either a cigarette or a cigar since 2009. I accept Dr. Perloff's testimony that after quitting tobacco one's risk of heart disease drops to that of a non smoker after five years. I find no clear evidence that the Claimant continued smoking after 2009. I find that Dr. Perloff and Dr. Pianko's testimony regarding the Claimant's smoking history to be vague and unconvincing that the Claimant continued to smoke after 2009.
7. I find that the August 3, 2014 event qualified as an accident to establish compensability and application of the Presumption under F.S. 112.18(1).
8. I find that the August 3, 2014 event resulted in temporary disability from August 3, 2014, through October 9, 2014, when the Claimant returned to work which is a requirement to compensability and entitlement to benefits. Sedacca v. City of Port Orange, 965 So2d 123 (Fla. 2007); Smith vs. City of Daytona Beach Police Department, 143 So3d 436 (Fla. 1<sup>st</sup> DCA 2014).
9. According to the testimony of Dr. Pianko, which I accept over the conflicting testimony of Dr. Perloff, the events in 1999, 2000 and 2009 were not really heart attacks, but atherosclerosis defined as incomplete blockages of the arteries. Dr. Pianko testified the August 3, 2014, event was a heart attack.
10. As to the reverse Presumption, under 112.18(b)(1)(a) I find that the Employer/Carrier has failed to provide sufficient evidence to support the reverse Presumption. I find there to be no departure in a material fashion from a prescribed course of treatment. I accept the Claimant's testimony that he has not smoked any tobacco product since 2009. I find Dr.

Perloff's testimony regarding the tobacco use to be vague and unsupported by the evidence.

11. The Employer/Carrier amended their defense to the indemnity claim, at the Final Hearing, that the Claimant's salary continued during his period of incapacity. I find that there was no evidence of salary continuation presented at the hearing. Alternatively, the Claimant testified that he was paid his accrued leave time.
12. Although both Counsel for the Claimant and for the Employer/Carrier raised the issue of Daubert in the pre-trial stipulation and in the physicians' depositions; neither Counsel raised the issue of Daubert by written or oral motion on or before the Merit Hearing; thus this Court did not address any issues as it pertains to Daubert v. Merrell Dow Pharmaceuticals Inc., 509 U.S. 579, 113 S.Ct 2786 L.E. 2d 469 (1993).

WHEREFORE, it is

ORDERED AND ADJUDGED that:

1. The Claimant's coronary artery disease is compensable.
2. The Employer/Carrier shall authorize a cardiologist, an internist or a PCP to treat the Claimant's coronary artery disease and hypertension, as it is necessary to treat the hypertension in order to treat the coronary artery disease.
3. The Employer Carrier shall pay temporary total disability (TTD) from August 3, 2014, through October 9, 2014, plus penalties and interest.
4. Costs and attorney fees are awarded to Claimant's counsel. Jurisdiction is reserved for a determination as to the quantum of attorney's fee and costs, if the parties are unable to agree.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 25

day of June, 2015.



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Mary A. D'Ambrosio  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Compensation Order was entered on the  
25 day of June, 2015 and that a copy thereof was electronically served on counsel.



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Secretary to Judge of Compensation Claims

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