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

Byron Hartman, Employee/Claimant, vs. City of Lakeland, Employer, and Claims Center, Carrier/Servicing Agent.	OJCC Case No. 06-019824MHH Date of Accident: 12/4/2005

COMPENSATION ORDER

THIS CAUSE was heard by the undersigned at Lakeland, Polk County, Florida on September 11, 2007 upon Claimant's claims for the worker's compensation benefits claimed in the Petition for Benefits docketed on July 10, 2006. The Employee was present at the hearing and was represented by his attorney, Todd J. Sanders, Esquire. The Employer/Carrier was represented by Dennis Ross, Esquire and Barbi Feldman, Esquire.

The claims specifically remaining for final hearing were:

1. Compensability of hypertensive condition pursuant to Section 112.18, F.S.
2. Authorization of medical care with a board certified internist or cardiologist, or other qualified medical provider.
3. Authorization of medications as to the nature of the injury in the process of recovery requires and as recommended by authorized treating physicians.
4. Penalties, interest, costs, and attorneys fees.

These matters were defended by the Employer/Carrier on these arguments:

1. The claim is denied in its entirety on May 31, 2006.
2. The condition was not deemed to meet the requirements of Section 112.18, F.S.
3. The present condition and the necessity of medical care and attention and is not related to an industrial accident.
4. Penalties, interest, costs, and attorney's fees are not due and owing.

The parties submitted the claim for hearing upon the following record:

COURT EXHIBITS

1. Composite of Petitions for Benefits, Notice of Final Hearing, Pretrial Stipulation, and Order Approving Pretrial Stipulation and Notice of Final Hearing.

EMPLOYEE EXHIBITS

1. Claimant's Trial Memorandum, received as argument only.
2. Deposition of Patrick Mathias, M.D., completed on July 13, 2007. (Proffered)

EMPLOYER/CARRIER EXHIBITS

1. Deposition of John Canto, M.D., completed on May 22, 2007.
2. Deposition of Records Custodian Judy Character for Clark & Daughtrey Medical Group, P.A., completed on July 24, 2007.
3. Deposition of Records Custodian Carole M. Frazier, RMR, for Jay Care Medical Center, completed on July 19, 2007.
4. Deposition of Byron Hartman, completed on October 9, 2006.
5. Employer/Carrier's Trial Exhibit
   a. Employer/Carrier's Notice of Denial Exhibit
   b. Employer/Carrier's Personnel Records Exhibit
6. Employer/Carrier's Supplemental Notice of Filing
7. Employer/Carrier's Trial Memorandum, received as argument only.

The Employee appeared and testified live at the hearing. In making my findings of fact and conclusions of law regarding these claims and defenses, I have carefully considered and weighed all the evidence presented to me. I have resolved all conflicts in the testimony presented to me. Although I may not reference each specific piece of evidence submitted by the parties, I carefully considered all the evidence and exhibits in making my findings of fact and rendering my conclusions of law.

Based upon the testimony contained in the depositions, testimony of witnesses, stipulations, and exhibits and after careful consideration of the arguments of counsel, I make the following findings of fact:

1. The claimant is a 54 year old police officer with the city of Lakeland. He had been employed as a police officer since 1987. Prior to his employment with the City of Lakeland he completed an employment application and underwent a pre-employment physical. There is no question but that the pre-employment physical did not reveal any evidence of hypertensive or cardiac disease.

2. The present controversy began on December 4, 2005. On that date the Employee contends that while doing his routine patrol duties began to feel weak and dizzy. He pulled into a fire station for a check up by a paramedic. At that time his blood pressure

considered extremely high and he was transported to the emergency room for an evaluation. The evidence is also clear and unequivocal that between his employment with the city in 1987 and December 4, 2005 the employee had been previously diagnosed with hypertension. The claimant admitted having received such a diagnosis as early as 2001. Since that time he had been taking medication to keep hypertensive condition under control. There was also a contention that the development of hypertension in 2001 was secondary to medications he was taking to combat an ear infection.

3. Following being checked up in the hospital on December 4, 2005 the claimant was released and returned home. He was not scheduled to work on December 5, 2005 or December 6, 2005 and returned to work on December 7, 2005. His day began with a midday briefing. However, prior to completion of that briefing the claimant again became dizzy and he was once again taken to Lakeland Regional Medical Center for an evaluation. On that date he was admitted and remain admitted for two (2) full days before discharge. While in the hospital he received a complete work up and battery of tests including cardiac catheterization. The diagnosis was essential hypertension, uncontrollable. He began to follow up with the Jay Care Medical Center. Following three (3) scheduled days off, December 9, 10, & 11, 2005, the claimant returned to work on full duty on December 12, 2005 and has not lost time from work subsequently. The Employer/Carrier contends that all the time off since the event on December 4, 2005 was coincidentally on days wherein the Employee had scheduled days off. As a result the undersigned finds that the Employee has not sustained any disability within the meaning of Section 440.02, Subsection 13, F.S.

4. The Employer/Carrier contends, and the Employee does not dispute, that on or about February 17, 2006 the Employer filed a letter of conditional acceptance of the claim reserving its rights to deny within 120 days. This exact letter is not in evidence. As a result of that letter, the Employer/Carrier paid in full the $24,045.00 medical bills generated from the initial medical care and attention provided to the Employee as well as out of pocket expenses in the amount of $38.49 to the Employee. However, subsequently on May 31, 2006 the Employer/Carrier filed a DWC-12 indicating that the entire claim was denied citing that the condition report does not meet its statutory requirements of Section 112.18, F.S. and any other ground as may be determined by subsequent investigation. This denial was reinforced by a second denial DWC-12 issued on June 28, 2006 denying the claimant's entire claim, medical, indemnity, and compensability for the same reasons. The Petition for Benefits was filed on July 6, 2006 which resulted in another denial being filed.

5. The Employee's claim is based entirely on the application of Section 112.18, F.S., commonly known as the Heart-Lung Bill, to the facts of this case. Prior to the commencement of the receipt of evidence in this case the Employee made an argument that the defenses as filed by the Employer/Carrier on May 31, 2006 were untimely and that they should be estopped from asserting these defenses by virtue of Section 440.20(4), F.S., commonly known as the 120 day rule. That section states: (4) "If the Carrier is uncertain of its obligation to provide all benefits or compensation, the Carrier shall immediately and in good faith commence an investigation of the Employee's entitlement

to benefits under this chapter and shall admit or deny compensability within 120 days **after the initial provision of compensation or benefits as required...".**

6. As argued in the Pretrial discussion, there was no question raised by the Employee that the Employer/Carrier did in fact issue a letter on or about February 17, 2006 evidencing its intent to pay and investigate pursuant to this provision. The Employer/Carrier contends that the denial dated May 31, 2006 fell well within the 120 days following the issuance of this letter and is therefore timely.

7. The Employee, however, argues on the authority of Osceola County School Board vs. Arace 884 So.2d 1003 (FLA 1st DCA 2004) that the denial is untimely. In **Arace** the First District Court of Appeals dealt with a case of first impression wherein the definition of the phrase "initial provision of benefits" was construed. The court concluded that the meaning of that phrase referred to the first examination or treatment by an authorized treating provider for the condition under investigation. The court stated, "We conclude that the "initial provision of benefits" occurs on the date a claimant visits an authorized physician. Authorization makes a doctor's visit, and payment for that visit, possible, but does not obligate the employer and carrier to pay for that visit until that visit takes place. Further, such a visit would produce the first available useful to the employer and carrier to determine whether the injury is compensable, which is one of the reasons for the 120-day period." Therefore, the first authorized doctor's visit by a claimant is the "initial provision of benefits," beginning the 120-day pay-and-investigate period mentioned in Section 440.20(4), F.S." Applying this rule in this case would lead to the conclusion that when the Employer/Carrier paid for the initial hospitalization and evaluation treatment at Lakeland Regional Medical Center as early as December 7, 2005, that hospitalization became the initial provision of benefits within the meaning of the statute as defined by the First District Court of Appeals. This construction of the statute has been affirmed by the district court in the case of Robert E. Mims vs. Confederated Staffing & Unisource Administrators, Inc. 940 So.2d 518 (Fla 1st DCA 2006); Begley's Cleaning Service & Nationwide Insurance Company vs. Julio Costa 913 So.2nd 1244 (Fla 1st DCA 2005); Anthony Tomaskovich vs. Andre LaPointe 904 So.2d 538 (Fla 1st DCA 2005).

8. As indicated earlier the Employer/Carrier argues that the denial of May 31, 2006 is well within the 120 days of the 120-day letter was mailed on or about February 17, 2006. However, in this instance when the Employer/Carrier agreed to initially accept the incident as compensable and paid the medical costs and expenses incurred, although the payment was made belatedly, the Employer/Carrier effectively authorized treatment as early as December 7, 2005. Applying the principles of the cases cited above the 120-day provisions would have expired on or about April 3, 2006. The Employer/Carrier ws unable to argue or establish that its knowledge of the facts and circumstances giving rise to this claim was in any way altered or changed between February 17, 2006 and May 31, 2006. Therefore, the notice of denial dated May 31, 2006 was untimely and the Employer/Carrier is stopped to deny compensability of this matter.

9. On the basis of the resolution of this issue, the undersigned deems it is unnecessary to engage in an analysis of the merits of the application of the presumption applied by

Section 112.18, F.S. to the facts of this case.

Accordingly, it is therefore ORDERED and ADJUDGED:

1. In accordance with the request raised in the Petition for Benefits docketed on July 10, 2006 the hypertensive condition manifest on December 4, 2005 is deemed compensable.
2. The Employer/Carrier shall authorize medical care as the nature of the injury and the process of recovery for the hypertensive condition requires by providing medical care and attention with a qualified physician to treat the hypertensive condition.
3. The Employer/Carrier shall further provide the provision of medical care as indicated above includes any and all authorized medical treatment and medications as deemed medically necessary.
4. The Employee's attorney has earned a reasonable fee and costs in connection with the obtaining of these benefits. Jurisdiction is reserved for determination of an amount.

DONE AND ENTERED in the Chambers of Fort Myers, Lee County, Florida.

Judge E. Douglas Spangler
Judge of Compensation Claims

I certify that a trued copy of the foregoing Order was served by mail on all parties and counsel this ____ day of _____, 2007.

NOV 16 2007

Judicial Assistant to Judge E. Douglas Spangler