STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
GAINESVILLE DIVISION

ROBERT C. STANLEY,
Claimant,

v.

Case No.: **07-008077JPT**
Judge: **John P. Thurman**
D/A: **04/06/2006**

DEPARTMENT OF CORRECTIONS
and DIVISION OF RISK MANAGEMENT
Employer/Carrier.

ORDER ESTABLISHING COMPENSABILITY

AFTER PROPER NOTICE to all Parties, the above entitled cause came on to be heard before the HONORABLE JOHN P. THURMAN, Judge of Compensation Claims (JCC), on Tuesday, October 16, 2007, in Ocala, Marion County, Florida. Present at the trial were the Employee/Claimant, ROBERT C. STANLEY, and his attorneys, MARTIN L. LEIBOWITZ, ESQUIRE and GEOFFREY BICHLER, ESQUIRE. Appearing in behalf of the Employer/Carrier was their attorney, BENJAMIN WILLIAMS, ESQUIRE.

Live testimony was presented by the Employee/Claimant, Robert C. Stanley, before the undersigned on the date of trial, followed by closing arguments presented by counsel for the respective Parties.

Following the close of evidence and closing arguments, at the conclusion of the trial, the undersigned instructed Martin L. Leibowitz, counsel for the Employee/Claimant, to prepare this Order Establishing Compensability:

The Parties **Stipulated** to the following:

1. The date of accident was Thursday, April 6, 2006;
2. Venue is in Ocala, Marion County, Florida;
3. There was an Employer/Employee relationship on the date of accident;
4. There was workers' compensation insurance coverage in effect on the date of the

accident;

5. There was timely notice of the pretrial and final hearing;

6. The Judge of Compensation Claims has jurisdiction over the subject matter and the Parties hereto;

7. If benefits under §440.13, Florida Statutes, (medicals) 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;

8. The authenticity of the pre-employment physical examination of March 23, 1989 and its admission into evidence;

The Stipulations of the Parties are proper and are hereby adopted into this Order by reference by the undersigned.

The **ISSUES** to be determined are:

1. Compensability of the Claimant's heart disease condition;

2. Medical care and treatment under the supervision of a board certified cardiologist;

3. Costs and attorney's fees.

The **DEFENSES** raised by the Employer/Carrier are:

1. The condition of the employee is not a compensable occupational disease because:

   a. The Employee/Claimant failed to provide timely notice of the alleged occupational heart disease; and

   b. The Employee/Claimant does not meet all statutory requirements for the presumption contained within §112.18, Florida Statutes, as he did not sustain any disability, having been absent from his employment and collected accumulated sick leave for 2 weekdays (Thursday, April 6, 2006 & Friday, April 7, 2006), and having scheduled himself off from work for 2 weekend days (Saturday, April 8, 2006 & Sunday, April 9, 2006), and collected no wages;

2. The statute of limitations had expired at the time the Employee/Claimant filed his petition for benefits;

3. The Employee/Claimant's employment with the employer was not the major contributing cause of his alleged occupational disease condition.

4. No costs or attorney's fees are due and owing.

At the time of the hearing, the following **EXHIBITS** were offered and accepted into evidence:

1.	JCC's Exhibit #1:	The Pretrial Stipulation entered into by the Parties June 26, 2007 and approved by the undersigned in the Pretrial Order and Order Governing The Trial entered July 9, 2007;
2.	JCC's Exhibit #2:	Petition for Benefits filed with the Division of Administrative Hearings, Office of the Judges of Compensation Claims, March 21, 2007;
3.	Claimant's Exhibit #1:	Claimant's Trial Memorandum dated October 13, 2007;
4.	Claimant's Exhibit #2:	Deposition of Sheila Reid as taken on October 11, 2007;
5.	Claimant's Exhibit #3:	Deposition of Robert L. Feldman, M.D. as taken on October 9, 2007 (objections to admissibility having been overruled at trial);
6.	Claimant's Exhibit #4:	Deposition of Sandra Higginbotham as taken on October 11, 2007;
7.	Employer/Carrier's Exhibit #1:	Employer/Carrier's Trial Memorandum of Law dated October 12, 2007;
8.	Employer/Carrier's Exhibit #2:	Deposition of Robert C. Stanley as taken May 24, 2007;
9.	Joint Exhibit #1:	Employee/Claimant's pre-employment physical examination dated March 23, 1989, stipulated into evidence by the parties.

The Employer/Carrier's Final Exhibit List and Medical Composite for Final Hearing, both furnished via the United States Postal Service to counsel for the Claimant on Thursday, October 11,

2007 and received by counsel for the Claimant the day before the final hearing, Monday, October 15, 2007, were ruled inadmissible. The Employer/Carrier had previously refused to allow all medical records into evidence without sworn proof (which had not been accomplished) in the Pretrial Stipulation & Pretrial Compliance Questionnaire (JCC's Exhibit #1, Part III. 2. WITNESSES AND EVIDENCE). Further, none of the offered Exhibits and Medical Composites had been previously authenticated by any witness. The unauthenticated Exhibit List and Medical Composite Exhibits were untimely pursuant to Rule 60Q-6.113(4), Rules of Procedure for Workers' Compensation Adjudications (RPWCA), were the subject of the Claimant's objection to their admission into evidence, and were not approved by the undersigned. Additionally, the unauthenticated Exhibit List and Medical Composite Exhibits were not received in evidence by the undersigned because they were voluminous and cumbersome, and their use was not unavoidable, pursuant to Rule 60Q-6.121(4), (RPWCA). The unauthenticated Exhibit List and Medical Composite Exhibits ruled inadmissible were not proffered by the Employer/Carrier, pursuant to Rule 60Q-6.121(1), (RPWCA).

STATEMENT OF THE CLAIM

The Employee/Claimant, ROBERT C. STANLEY, hereinafter referred to as the "Claimant", has been employed as a certified law enforcement officer with the Department of Corrections since April 21, 1989, and currently serves as a Correctional Probation Senior Officer.

The Parties stipulated into evidence the record of the pre-employment physical examination performed on March 23, 1989, which reflected the Employee/Claimant's heart and blood pressure readings to be normal.

Prior to the amendment to §112.18, Florida Statutes, effective July 1, 2002, which effectively expanded the "presumption" to include any law enforcement officer, the Claimant presented to the Munroe Regional Medical Center Emergency Department on May 29, 2000 with a heart attack. Robert Feldman, M.D., board certified in Cardiology, the subspecialty of Interventional Cardiology, General Internal Medicine, and Endovascular Medicine, was deposed as a fact witness whose deposition testimony consisted only of his factual report of information contained in his records regarding his treatment of the claimant for heart disease, including surgery, his independent recollection, and his standard procedures in the treatment of his patients, including Mr. Robert

Stanley, on Tuesday, October 9, 2007. The Employer/Carrier's motion to exclude Dr. Feldman's deposition testimony pursuant to §440.13(5)(e), Florida Statutes (Supp.1994), which permits medical opinion testimony only by an expert medical advisor, independent medical examiner or authorized treating provider, was denied by the undersigned in accordance with the holding in Office Depot, Inc. v. Sweikata, 737 So.2d 1189 (Fla. 1st DCA 1999), wherein the court held that it was error to exclude non-IME/EMA/Treating doctor's deposition testimony because his deposition consisted only of a factual report of the information contained in his office records regarding claimant's visits to him for back pain. In Sweikata, as here, the doctor enumerated what the Claimant's complaints and his diagnosis had been, and the treatment he had prescribed, but he offered no medical opinion regarding any of these matters.

Dr. Feldman testified that catheterization in 2000 showed a lot of blockage and Dr. Michael Carmichael performed a triple-vessel bypass (coronary artery bypass graft surgery).

The Claimant did well into approximately 2005. At that time he was having some shortness of breath, some discomfort in his left arm and his chest. A clinical cardiologist performed a stress test which was abnormal and the Claimant was referred to Dr. Feldman, who performed an angiogram for a heart catheterization on January 11, 2005. This revealed that 2 of the Claimant's bypasses performed 5 years earlier were already closed, one blood vessel that had been bypassed had moderate blockage, and the other had severe blockage. Dr. Feldman placed a stent in the Claimant's right coronary artery on January 11, 2005. Dr. Feldman testified that, at least in 2005, the Claimant had coronary artery disease, and his blocked blood vessel was the result of coronary artery disease, also known as atherosclerosis.

Thereafter, and subsequent to the amendment to §112.18, Florida Statutes, effective July 1, 2002, as a result of similar recurrent symptoms and again, an abnormal stress test, the Claimant presented to the Munroe Regional Medical Center on April 6, 2006 (the date of accident herein). Repeat catheterization at that time showed that the stent from January 2005 looked okay. There was a little more blockage in one other place, so Dr. Feldman placed a second stent in the descending branch of the Claimant's left coronary artery on April 6, 2006.

According to Dr. Feldman, the Claimant's 75% and 100% blockages resulting in the placement of the second stent, and additional blockage in another artery which did not require a stent, were the result of coronary artery disease.

Dr. Feldman's final diagnosis in April 2006 was unstable angina, heart disease and coronary artery disease, with stents placed both in 2005 and 2006.

Dr. Feldman's testimony confirmed that the Claimant was hospitalized on April 6, 2006 and discharged the following day, April 7, 2006. Dr. Feldman testified that he "...would have advised him not to return to work for at least 3 days after the procedure", i.e., from April 6, 2006 (date of procedure) through April 9, 2006, or a total of 4 days that the Claimant would have been incapable of performing work or earning wages

The Claimant testified that he underwent heart catheterization performed by Dr. Feldman on Thursday, April 6, 2006 as a result of his development of heart disease during the course of his career with the State of Florida, Department of Corrections. He further testified that he was incapacitated and incapable of performing work and earning wages, and utilized accumulated sick leave, for the day of the procedure, Thursday, April 6, 2006, and the day following, Friday, April 7, 2006, i.e., he received accumulated sick pay for Thursday, April 6, 2006 and Friday, April 7, 2006, in lieu of earning wages.

The Claimant testified that he remained incapacitated and incapable of performing work and earning wages on Saturday, April 8, 2006 and Sunday, April 9, 2006. He explained that he was responsible for proposing his own work schedule, subject to approval by his supervisor, in April 2006, and normally worked on weekends on occasion. He purposely scheduled himself off on Saturday, April 8, 2006 and Sunday, April 9, 2006, because he knew that he would likely be incapacitated and incapable of performing work and earning wages on these dates due to his impending heart catheterization and potential stent placement or coronary bypass graft surgery on Thursday, April 6, 2006.

After the surgery on Thursday, April 6, 2006, the Claimant testified that Dr. Feldman advised him that he should not return to work for at least 3 days after the procedure. After 4 days off, he returned to his job [See Seminole County School Board v. Tweedie, 922 So.2d 1011 (Fla. 1st DCA 2006), where Claimant's testimony was that she was unable to work during the period in question

and that her orthopedic surgeon never advised her that she could return to work was competent substantial evidence of the award of temporary total disability].

The deposition of the Employer was scheduled pursuant to Rules 1.310(b)(5) & (6), Fla.R.Civ.P. and Rule 60Q-6.114(1)(a), (RPWCA). Sandra Higginbotham appeared on October 11, 2007 as the Employer designee. She testified that the claimant's supervisor at the time of his accident, Gwendolyn Mobley, was in a better position to know why the Claimant was in the hospital in April 2006 than she.

Based on information obtained from her computer and documents provided to her during her deposition by counsel for the Claimant, Ms. Higginbotham testified that Mr. Stanley used 8 hours of sick leave on the date of accident, Thursday, April 6, 2006, 8 hours of sick leave on Friday, April 7, 2006, and although he worked on some, but not all weekends, scheduled himself off work on Saturday, April 8, 2006 and Sunday, April 9, 2006 .

The deposition of the Carrier was scheduled pursuant to Rules 1.310(b)(5) & (6), Fla.R.Civ.P. and Rule 60Q-6.114(1)(a), (RPWCA). Sheila Reid appeared as the Carrier designee.

Ms. Reid testified that, in April, May and June 2006, she was completely unaware of the Claimant's heart problems. She became aware of the Claimant through a facsimile from the Employer's Workers' Compensation Coordinator, Cynthia Plummer, with an attached March 22, 2007, 1st Report of Injury. She received an electronic 1st Report of Injury on March 27, 2007 and thereafter, on March 28, 2007, sent the Claimant an informational brochure setting forth an explanation of the employee's rights and obligations under the Florida Workers' Compensation Law including, but not limited to, information regarding the Statute of Limitations.

The Claimant testified at the final hearing that he underwent a pre-employment physical examination on March 23, 1989 when he first began his employment with the State of Florida Department of Corrections, (Joint Exhibit #1), which was stipulated into evidence by the parties as having revealed no evidence of his claimed heart disease condition.

Ms. Higginbotham testified during her deposition that she reviewed the Claimant's March 23, 1989 pre-employment physical examination report and confirmed that it indicated that everything was normal including the Claimant's heart, blood pressure and EKG results.

Ms. Reid also testified that she reviewed the Claimant's pre-employment physical examination during her deposition, and that she saw nothing that was abnormal in the Claimant's pre-employment physical examination.

The Claimant further testified that he was unaware until approximately the time of filing his Petition for Benefits on March 21, 2007 that he had a potential claim under the Florida Workers' Compensation Law as a result of his development of heart disease. He had, however, advised his immediate supervisor, Gwendolyn Mobley, prior to April 6, 2006 that he was being admitted to the hospital as a result of heart disease related treatment and need for surgery, specifically heart catheterization, and possibly stent insertion. Furthermore, he also advised Gwendolyn Mobley at some point during the 90 day notice period after April 6, 2006 that he had been in the hospital as a result of heart disease related treatment and the need for surgery, specifically stent insertion. The claimant explained that the office in which he works for the employer is small and people spoke of their personal issues regularly.

Notwithstanding these conversations with his immediate supervisor, he was never requested to complete and sign a 1st Report of Injury or Occupational Disease, and he never received the informational brochure from the Employer's insurance carrier prior to the filing of his Petition for Benefits on March 21, 2007 which, pursuant to §440.185(4), Florida Statutes, must be delivered to the employee within 3 days after the Employer or the Claimant informs the Carrier of an injury. According to the testimony of Sheila Reid, the statutorily mandated informational brochure containing statute of limitations information was not mailed to the Claimant until March 28, 2007.

The Petition for Benefits herein was filed on March 21, 2007, requesting determination of compensability of the Claimant's heart disease condition, pursuant to §112.18, Florida Statutes; authorization of care and treatment for the Claimant's heart disease condition with a Board Certified Cardiologist; and penalties, interest, costs and attorney's fees to be paid by the Employer/Carrier, pursuant to §440.34, Florida Statutes.

In making my **FINDINGS OF FACT AND CONCLUSIONS OF LAW** in this claim, I have carefully considered and weighed all of the testimony and evidence presented to me, including all live and deposition testimony, as well as exhibits, and have resolved any and all conflicts therein. I have also carefully observed the candor and demeanor of the Claimant, ROBERT STANLEY, who

was the only witness who testified live before me, and have resolved any conflicts in the testimony and the evidence.

After having carefully considered the testimony at trial, the deposition testimony, as well as all of the evidence, the statutes, and the applicable case law, the undersigned Judge of Compensation Claims makes the following determinations:

1. The Judge of Compensation Claims has jurisdiction of the Parties and the subject matter of this claim.

2. The stipulations of the Parties as to certain facts are proper, and are therefore, hereby approved and adopted by me.

3. I find that Claimant underwent a pre-employment physical examination on March 23, 1989, and that physical examination failed to reveal any evidence of the condition claimed. More specifically, there was no evidence of heart disease or hypertension contained within the pre-employment physical examination.

4. I find that the Claimant developed heart disease during his tenure as a Certified Law Enforcement Officer and Correctional Probation Senior Officer with the Florida Department of Corrections.

5. I find the Claimant is entitled to the benefit of the presumption found in §112.18, Florida Statutes, based on his clean pre-employment physical examination and status as a Certified Law Enforcement Officer and Correctional Probation Senior Officer.

6. I find the questions before this Court were whether the Claimant sustained a partial or permanent "disability", and whether the Claimant failed to provide timely notice of his occupational heart disease.

Based on my reading of the case law on the issue of "disability", the definition of "disability" does not require a permanent incapacitation. My interpretation of the definition of "disability", pursuant to the rationale provided in City of Mary Esther v. McArtor, 902 So.2d 942 (Fla. 1st DCA 2005), is that "disability" is an incapacity to perform work, either on a temporary or permanent basis, and that disablement means the event upon which the employee becomes actually incapacitated, partially or totally, from performing his employment. Sledge v. City of Fort Lauderdale, 497 So.2d 1231 (Fla. 1st DCA 1986).

The unrefuted testimony establishes the Claimant suffered from heart disease at the time he became incapacitated and unable to earn wages in April 2006, that Dr. Feldman would have advised the Claimant not to return to work for at least three days after the April 6, 2006 stent procedure, and that the claimant was told to take 3 to 4 days off from work by Dr. Feldman, all of which equate to the Claimant's incapacity to perform work, either on a temporary or permanent basis, and inability to earn wages as a result of his occupational heart disease, and therefore establish competent and substantial evidence of "disability".

The Employer/Carrier presented no medical evidence of causation in response to the Claimant's testimony that he underwent a "clean" pre-employment physical examination. In fact, the deposition testimony of both the Employer and Carrier designees supported the Claimant's testimony.

The deposition testimony of Dr. Feldman and the Employer Representative, and the Claimant's live testimony, all supported the fact that the Claimant's heart disease condition resulted in his incapacitation and loss of the ability to earn wages for a total period of 4 days, including use of sick leave time for 2 of those 4 days when the Claimant was scheduled to work. This testimony established the Claimant's total or partial disability for a period of 4 days.

The Employer/Carrier must demonstrate competent evidence that some other factor was the cause of the Claimant's condition and need for treatment in order to overcome the presumption. As stated in City of Tarpon Springs v. Vaporis, 953 So. 2d 597 (Fla. 1st DCA 2007), "[w]e also hold that the firefighter's presumption merely switches the burden of proof from claimant to employer/carrier, and may be overcome by, as the statute plainly states, 'competent evidence' ". The Employer/Carrier presented no medical evidence and, thus, has failed to provide competent evidence to overcome the presumption.

The Florida Supreme Court in Caldwell v. Division of Retirement, 372 So. 2d 438, 441 (Fla. 1979), specifically recognized that the presumption relieves the Claimant,

> ...from the necessity of proving an occupational causation of heart disease. The Statute cast on the employer the burden of persuading the trier of fact that the disease was caused by a non-occupationally related agent. The presumption would be

meaningless if the only evidence necessary to overcome it is evidence that there has been no specific occupationally related event that caused the disease.

To rebut the statutory presumption, it is necessary that the Commission show that the disease causing disability or death was caused by a specific, non-work related event or exposure.

On the question of the Claimant's disability, both the claimant's live testimony and Dr. Feldman's deposition testimony were unrefuted. The Claimant was incapacitated and incapable of performing work or earning wages on the date of the procedure, Thursday, April 6, 2006, and for at least 3 days thereafter, or a total of 4 days. See City of Port Orange v. Sedacca, 953 So.2d 727, 735 (Fla. 1st DCA 2007), Benton, J. concurring in the judgment with written opinion: "When employees have been symptomatic and ill enough with occupational diseases to have to miss work, they have thereby suffered 'disablement,' defined by statute as incapacity because of the injury to earn in the same or other employment the wages which the employee was receiving at the time of the injury." §§440.151(3), F.S. (2003) and 440.02(13), F.S. (2003), See also the key phrase of §112.18(1), F.S. (2003): "resulting in total or partial disability".

As noted in McArtor, at 944,

> 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. No dispute exists here that, during the periods in question, the claimant was incapable of performing his duties as fireman and, therefore, did not have the actual capacity to earn his wages as a fireman. As such, the claimant was disabled and the city's continued payment of the claimant's salary did not relieve E/C 2 of the burden of providing workers' compensation benefits.

Here, the claimant was temporarily incapable of performing his duties as a law enforcement officer over the course of 4 days and, therefore, did not have the actual capacity to earn his wages as a law enforcement officer and, thus, was disabled notwithstanding his receipt of sick pay on 2 of the total 4 days of disability.

Moreover, pursuant to §440.02(28), Florida Statutes, the term wages "...includes only the wages **earned**..." (emphasis added). Once the Claimant herein began utilizing his sick time and was temporarily incapable of "earning" wages, disability was established.

In the absence of evidence from the Employer/Carrier that the disease resulting in the Claimant's disability was caused by a specific, non-work related event or exposure, I find the claimant to be a Certified Law Enforcement Officer with a clean pre-employment physical examination that meets the burden of showing disability, based on his incapacity to temporarily perform his duties. Further, there is evidence that he actually lost time from work as a result of heart disease. Therefore, I find the presumption contained in §112.18, Florida Statutes, applicable, and that the Claimant is entitled to the benefits afforded him under the presumption, since the Employer has not supplied competent evidence to overcome the presumption.

7. While it was argued by the Employer/Carrier that there is no loss of wages until the statutory 7 day waiting period in §440.15, Florida Statutes, has been satisfied, I specifically reject the Employer/Carrier's argument that the Claimant must miss 7 days of work for this benefit to attach. This statute specifically addresses when indemnity payments become due and payable. It is not intended to be the standard of disability and to use it for this purpose would be contrary to the case law and plain meaning of the statute itself. The time during which Mr. Stanley was incapacitated and actually lost time from work in this matter was more than sufficient to meet the partial disability standard as I interpret it from the case law and reading of the statute. City of Kissimmee v. Simpson, Case No. 1D06-4296 (Fla. 1st DCA August 31, 2007).

8. With respect to the Employer/Carrier's reliance on the expiration of the statute of limitations, the Employer/Carrier indirectly raised the issue of the proper date of accident in an occupational disease case. This was addressed by the First District Court of Appeals in Orange County Fire Rescue v. Jones, 959 So.2d 785 (Fla. 1st DCA 2007). In that case, the claimant firefighter was first diagnosed with hepatitis C on February 23, 1992, which was accepted as a compensable occupational disease by the employer/carrier. The claimant eventually returned to work, but on November 3, 1997 he again began treatment with interferon and ribavirin for his hepatitis C, resulting in his removal from work during the course of treatment, ultimate achievement of maximum medical improvement, and assignment of an impairment rating. The Claimant then

asserted November 3, 1997 as a new date of accident. The Jones court opined that it had, "...consistently held that when a claim involves an occupational disease, the date of accident for the purpose of benefits is the date of disability – not the date of the diagnosis, exposure to, or contraction of the disease. Jones at 786 – 787.

Citing Michels v. Orange County Fire/Rescue, 819 So.2d 158, 160 (Fla. 1st DCA 2002), the Jones court reiterated that,

> It is well-settled in occupational disease cases that the date of accident is determined by the date of disability, and disability is defined as the date the claimant became incapable of performing work in the last occupation in which he was exposed to the hazards of the disease. Accordingly, detection of an occupational disease does not necessarily coincide with the date of disablement from the disease.

The Jones court at 788 further clarified that, "[T]he date of accident is the time such disability resulted in the inability to work – not the date of the diagnosis", in rejecting the carrier's argument that there cannot be more than one date of accident. Citing McArtor, supra, the court reiterated its acknowledgment of the possibility of multiple dates of accident in occupational disease cases.

The Jones court then held, at 789, that,

> Because the date of accident in an occupational disease case is the date of disability next after a period of injurious exposure, and multiple periods of exposure took place here, the claimant suffered a new date of accident when, after a lengthy period of full-time employment, he missed work beginning on November 3, 1997.

Here, the Claimant also suffered multiple periods of exposure and, after a lengthy period of full-time exposure between January 11, 2005 and April 6, 2006, again missed work due to his incapacity and inability to perform his work, resulting in a new date of accident, i.e., April 6, 2006. Thus, the statute of limitations had not run as of the date the Claimant's Petition for Benefits was filed, stipulated to be March 21, 2007 (JCC's Exhibit #1).

Furthermore, according to the testimony of Sheila Reid, the claimant was not provided with an informational brochure containing an explanation of his rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers

under the Florida Workers' Compensation Law until March 28, 2007. The claimant's Petition for Benefits in this matter had already been filed on March 21, 2007. Thus, again, the statute of limitations had not run as of the date the Claimant's Petition for Benefits was filed.

9. With respect to the question of notice, the Claimant provided unrefuted testimony that he informed his supervisor, Gwendolyn Mobley, of his heart disease within 90 days of his April 6, 2006 accident. Therefore the employer/carrier was given actual, and timely, notice that the Claimant had heart disease [§§440.185(1) & 440.151(6), F.S. (2003)]. The Employer/Carrier is estopped from arguing "notice" when they had actual notice, and where the Claimant had no superior knowledge over the Employer/Carrier as to his occupational disease being covered under the Workers' Compensation Act pursuant to the presumption in §112.18, Florida Statutes.

10. Based on the foregoing, I find the Claimant's heart disease condition to be compensable as he has met his burden of proof with the benefit of the presumption as codified in §112.18, Florida Statutes. It is clear the Claimant has heart disease.

11. I specifically reject the Employer/Carrier's arguments that the Claimant failed to provide timely notice of the alleged occupational heart disease; that the Claimant does not meet all statutory requirements for the presumption contained within §112.18, Florida Statutes; that the statute of limitations had expired at the time the Claimant filed his petition for benefits; and that the Claimant's employment with the employer was not the major contributing cause of his occupational disease condition.

12. I find the Claimant to be completely credible and accept his testimony in its entirety and reject that of any others which may be in conflict with it. I further accept the fact witness testimony of Dr. Feldman.

WHEREFORE, it is the **ORDER** of the undersigned Judge of Compensation Claims that:

1. The Claimant's heart disease condition is compensable;
2. The Employer/Carrier shall reimburse the Claimant for taxable costs incurred in preparation for these proceedings;
3. The Employer/Carrier shall pay the Attorneys for the Claimant a reasonable attorney's fee for their services and efforts in obtaining these valuable benefits in behalf of the Claimant;

4. Jurisdiction is hereby reserved to determine the amount of attorney's fees and taxable costs due the Claimant's Attorneys from the Employer/Carrier, should the Parties be unable to amicably resolve these issues between themselves;

5. Any arguments or issues not raised at the Hearing are hereby waived;

6. All Petitions for Benefits pending as of the date of the Final Hearing, Tuesday, October 16, 2007, are resolved.

DONE AND ORDERED in Ocala, Marion County, Florida this 9th day of November, 2007.

SEAL

HONORABLE JOHN P. THURMAN
Judge of Compensation Claims

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the above **ORDER ESTABLISHING COMPENSABILITY** was entered in the office of the Judge of Compensation Claims and a copy was served by U.S. Mail on each of the below-referenced parties and their respective counsel on the 9th day of November, 2007.

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