JAN 16 2008

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

Cecil Polk,

Claimant,

vs.

City of Lakeland Police Department/
The Claims Center,

Employer/Carrier.

OJCC CASE NO: 06-018994 KDS
JUDGE: Kathy DeKoff Sturgis
Date Accident: May 16, 2006

ORDER ON COMPENSABILITY

Pursuant to the Notice of Hearing, this matter came on to be heard before the undersigned Judge of Compensation Claims in Lakeland, Polk County, Florida on Friday, August 31, 2007, at 3:00 p.m. Present and representing the Claimant, Cecil Polk, was Paul A. Kelley, Esquire, of Winter Park. Present and representing the Employer, City of Lakeland, and Carrier, The Claims Center (collectively, Employer/Carrier or E/C) were Dennis Ross, Esquire, Barbie Feldman, Esquire, and Virginia C. Carter, Esquire, of Lakeland. **The parties waived the timeliness requirement in the rules and statute that require the court to prepare an order within thirty days of the hearing date.**

The issues addressed at trial were those raised in the Petitions for Benefits filed

on June 29, 2006 and January 26, 2007. Subsequent to the trial, by memorandum dated Monday, December 17, 2007, the undersigned made detailed findings of fact and requested that Paul A. Kelley, the attorney for the Employee/Claimant, draft a proposed Order consistent with those findings. The attorney for the Employer/Carrier was also asked to review the proposed order and to submit comments on same to me and opposing counsel.

At the pre-trial conference or prior to this matter being submitted for determination, the parties, by counsel, arrived at the following **STIPULATIONS**:

1. The Judge of Compensation Claims has jurisdiction over the parties and the subject matter, and venue is proper in the Lakeland District;

2. There was an employer/employee relationship on the date of accident, May 16, 2006;

3. The Employer had either workers' compensation insurance coverage, or a qualified self-insurance program, in place on the date of accident;

4. The accident was never accepted as compensable by the Employer/Carrier;

5. There was timely notice of the pre-trial conference and the trial/final hearing;

6. The date of the accident is May 16, 2006;

7. The place of accident/venue is Polk County;

8. The correct average weekly wage and compensation rate are $1,063.43 (not including fringe benefits as they continue to be provided) and $683.00 (maximum compensation rate for 2006) respectively;

9. That 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;

10. No medical treatment has been authorized;

11. That the Petitions for Benefits were filed with the Division on June 29, 2006 and January 26, 2007; and

12. That the Notice of Denial was filed July 11, 2006.

As framed by the parties, the **ISSUES** to be adjudicated at this time are limited to the following:

1. Determination of compensability of the Heart Attack and Heart Disease conditions, pursuant to Florida Statute 112.18;

2. Authorization for evaluation, medical care and treatment with Board Certified Cardiologists to treat the Heart Attack and Heart Diseases;

3. Payment of Temporary Total Disability, as appropriate, from May 16, 2006 to present and continuing, at the correct compensation rate;

4. Payment of Temporary Partial Disability, as appropriate, from May 16, 2006 to present and continuing, at the correct compensation rate;

5. In the alternative reimbursement to the Claimant's sick, vacation, annual leave banks, accrued comp time, and saved holiday pay;

6. Correction of the AWW/CR to include all earnings in the 91 days prior to the accident (this issue was withdrawn as parties stipulated to the correct AWW/CR before trial);

7. In the alternative, payment of impairment benefits based on 50% impairment rating assigned by Dr. Patrick Mathias for coronary artery disease, 20% for cardiac arrhythmia, 25% for cardiomyopathy, and 25% for erectile dysfunction; and

8. Penalties, interest, costs and attorney's fees to be paid by the Employer/Carrier, pursuant to Florida Statutes §440.32 and §440.34.

The Employer/Carrier has asserted the following **DEFENSES**:

1. Claim denied in its entirety; medical, indemnity, and compensability;

2. The presumption of the heart and lung statute 112.18, does not apply, as the Claimant was diagnosed with hypertension prior to his employment with the City of Lakeland;

3. The presumption of the heart and lung statute 112.18, does not apply, as the Claimant had an abnormal pre-employment physical;

4. No causal relationship between the Claimant's condition and his employment as a police officer;

5. Claimant not entitled to impairment benefits as the major contributing cause of Claimant's heart disease is personal in nature and unrelated to Claimant's employment as a police officer;

6. The major contributing cause of Claimant's condition is personal in nature and unrelated to Claimant's employment as a police officer;

7. The Employer/Carrier assert defense of fraud, as Claimant misrepresented his family history to medical providers in an effort to obtain workers' compensation benefits;

8. Florida Statute 112.18 creates an unequal application of laws as the

statute creates a protected class that should not be merely because of a job;

9. Florida Statute 112.18 has a competent evidence standard. The Supreme Court's interpretation has a clear and convincing standard which goes against the intent of the legislature and precludes the Employer/Carrier's ability to prove that the Claimant's condition is unrelated;

10. The Statute 112.18 is unconstitutional as written and interpreted by the court as it denies the Employer/Carrier's right to due process;

11. The Employer/Carrier disagree with the 50% impairment rating of Dr. Mathias;

12. Dr. Canto, the Employer/Carrier's IME, opines the Claimant's impairment rating as 42%;

13. No entitlement to penalties, interest, costs and attorney's fees; and

14. The Employer/Carrier objects to the Court's consideration of any issues that have not been properly raised through a Petition for Benefits or mediated.

The Claimant presented his own testimony live at trial.

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

JCC's Composite Exhibit #1: The initial Pretrial Stipulation and Order as approved by this Court on June 6, 2007, together with the Employer/Carrier's Amended Witness and Exhibit List dated July 25, 2007;

JCC's Exhibit #2: Claimant's Trial Memorandum dated August 29, 2007, together with the Final Compensation Order of James Hills dated May 22, 2007, accepted in lieu of opening argument and admitted for argument purposes only;

JCC's Exhibit #3: Employer/Carrier's Memorandum of Fact and Law dated August 29, 2007, accepted in lieu of opening argument and admitted for argument purposes only;

JCC's Exhibit #4: Certified Copy of Death Certificate, admitted conditionally, subject to the Employer/Carrier being able to establish relevance sufficient to overcome the Claimant's objection that it is not relevant. As it is a Public Record, this Court can take Judicial Notice of same, overcoming the Claimant's objection to unauthenticated hearsay and not being timely listed on the Pretrial Exhibit List;

Claimant's Exhibit #1: The deposition of Karen Lynn Lukhaub, taken February 22, 2007, together with attachments;

Claimant's Exhibit #2: The deposition of Lisette Barbosa, taken January 18, 2007, together with attachments;

Claimant's Exhibit #3: The deposition of Chief Robert Boatner, taken May 2, 2007, together with attachments;

Claimant's Exhibit #4: The deposition of Madonna Barbara Jordan, taken February 20, 2007, together with attachments;

Claimant's Exhibit #5: The deposition of Madonna Barbara Jordan, taken May 17, 2007, together with attachments;

Claimant's Exhibit #6: The deposition of Dr. Edward Demmi, taken May 29, 2007, together with attachments;

Claimant's Exhibit #7: The deposition of Dr. Patrick Mathias, taken May 8, 2007, together with attachments;

Claimant's Exhibit #8: The deposition of Sgt. Edward Cain, taken May 2, 2007,

together with attachments;

Employer/Carrier's Exhibit #1: The deposition of Lyla Peddycoart, taken May 9, 2007, together with attachments, accepted for historical purposes only;

Employer/Carrier's Exhibit #2: The deposition of Patty Rhodes, taken August 2, 2007, together with attachments, accepted for historical purposes only;

Employer/Carrier's Exhibit #3: The deposition of Dr. John Canto, taken May 24, 2007, together with attachments;

Employer/Carrier's Exhibit #4: The deposition of Cecil Polk, taken September 12, 2006, together with attachments; and

Employer/Carrier's Exhibit #5: The deposition of Judy Character, taken August 20, 2007, together with attachments, accepted for historical purposes only.

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, Cecil Polk, the only witness to testify live before me at trial, and have resolved any conflicts in the testimony and the evidence. The Court finds that the Claimant was credible and his testimony was consistent with logic and reason. In this case, the opinions of the Claimant's expert, Dr. Patrick Mathias and the Employer/Carrier's expert, Dr. John Canto, agreed in many areas, but likewise differed on some points. To the extent that the opinions were consistent, I accept that testimony from each physician. However, wherever the testimony may be in conflict, except as otherwise stated herein, I accept the testimony and opinions of Dr. Patrick Mathias, over

that of Dr. John Canto, as being more consistent with logic and reason when viewed in light of the totality of the medical evidence and facts of this claim. I also note that Dr. Mathias has specific education, training and experience in these matters beyond that of Dr. Canto. In arriving at these Findings of Fact and Conclusions of Law, I have further rejected all of the evidence and inferences which may be inconsistent with these findings and conclusions.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations of the parties are adopted by me as findings of fact and incorporated herein by reference as if set out at length herein;

2. The Claimant was employed as a Police Officer for the City of Lakeland Police Department on the date of injury, May 16, 2006. Prior to commencing his employment with the Employer, the Claimant successfully passed a pre-employment physical which took place on November 19, 1998. The medical testimony of Dr. Edward Demmi, the physician who performed the physical at the request of the Employer, was that it was a normal exam and assessment, and that the Claimant passed it.

Although it is clear that the physical notes a blood pressure rating of 180 over 90, both Dr. Mathias and Dr. Canto testified that the reading did not establish that the Claimant had hypertension. Dr. Mathias testified that there was no evidence of hypertension on the pre-employment physical. Dr. Demmi, also testified that he would not have cleared the Claimant for employment if he had any evidence of hypertension

or heart disease. Dr. Demmi further testified that there was no evidence of hypertension at the time he saw him or ongoing. Accordingly, he was approved for full duty as a police officer for the City of Lakeland. Dr. Canto testified that there was no convincing diagnosis of hypertension and acknowledged, as did Dr. Mathias, that white coat syndrome did typically involve an elevated systolic blood pressure reading. He further stated that a single blood pressure of 180 over 90 is not evidence of hypertension, but rather something to look at.

At trial, the Claimant testified he learned in his late teens that he had "White Coat Syndrome". It is common, when he first goes for a doctor's visit, for his blood pressure to be slightly elevated due to anxiety. The Claimant notifies the physician of this, they let him sit for a few minutes, and then recheck his blood pressure. The blood pressure is then noted to be within normal limits. This testimony is consistent with the testimony of Dr. Demmi, Dr. Mathias and Dr. Canto.

Accordingly, this Court finds that the Claimant successfully passed his pre-employment physical and, the pre-employment physical was normal and failed to reveal any evidence of the claimed heart disease conditions.

In the alternative, should it be later determined that there was any evidence of hypertension on the pre-employment physical, this Court finds it would not preclude a claim for heart disease as there was no evidence of heart disease on the pre-employment physical.

3. Officer Polk began his career as a law enforcement officer with the City of Lakeland Police Department on April 11, 1999, and has remained in continuous employment with the City of Lakeland since that date, serving primarily in the capacity

of a road patrol officer. It is uncontested that the Claimant is and was a law enforcement officer at the time of the industrial accident. This Court therefore finds that the Claimant meets the definition of "law enforcement officer" for the purposes of the application of the presumption contained within Florida Statutes §112.18(1).

4. It is undisputed in the medical evidence, that the Claimant developed cardiomyopathy, cardiac arrhythmia, erectile dysfunction and coronary artery disease, during his employment with the Employer, leading to a myocardial infarction (heart attack), which resulted in coronary bypass surgery and implantation of an internal pacemaker/defibrillator for his cardiac arrhythmias.

Officer Polk was at work for the City of Lakeland Police Department on May 16, 2006, in the middle of his regular shift, when he reported feeling ill and went home to rest. This was confirmed in the deposition testimony of Sgt. Edward Cain, the Claimant's supervisor. When he didn't feel better the next morning he went to the Watson Clinic where he was taken to Lakeland Regional Medical Center, by ambulance, for evaluation for an apparent heart attack.

At Lakeland Regional Medical Center, the Claimant was placed on the cardiac floor where diagnostic studies were done. Echocardiogram confirmed the heart attack and heart damage. An emergency cardiac catheterization was performed which further revealed significant blockages in the four main arteries, requiring bypass surgery.

A quadruple bypass was performed on May 19th, 2006. Post operatively, the Claimant went into shock, requiring the placement of a balloon pump. Subsequently, Officer Polk went into ventricular tachycardia and had to be. The Claimant was transferred by helicopter, on May 22, 2006, to Tampa General Hospital for emergency

heart transplantation.

Under the supervision of the cardiac specialists at Tampa General Hospital, Dr. Mark Weston and Dr. Bengt Herweg, the Claimant's condition improved and he was able to avoid a heart transplant. The Claimant was able to return home on May 30, 2006. Later, Dr. Herweg, his cardiologist in Tampa, evaluated Mr. Polk on June 14, 2006, and recommended a biventricular AICD implantation. Officer Polk was readmitted to Tampa General Hospital on June 29, 2006 for implantation of a bi-v AICD (pacemaker/defibrillator) to treat the ventricular tachycardia and depressed ejection fraction. The unit was placed on July 10, 2006, by Dr. Mark Weston, electro physiologist, without any complications, and was subsequently discharged home on July 11, 2006.

Pursuant to the opinions of both IME physicians, the Court finds these cardiac conditions meet the definition of "heart disease" contemplated and covered under the provisions of Florida Statute §112.18, the "Heart/Lung" bill.

5. Based on the totality of the evidence, it is clear the Claimant sustained a "disability", sufficient enough to trigger the benefits afforded under the presumption contained within Florida Statutes §112.18. The Claimant was incapacitated from performing his work as a law enforcement officer, and also unable to earn the same or similar wages, for the period of May 16, 2006 until his return to work on September 14, 2006. This finding is supported by the medical opinions provided by both IME physicians, the medical records of the treating facilities, and the deposition testimony of Karen Lukhaub, Barbara Jordan, Lisette Barbosa, Sgt. Edward Cain, and Chief Roger Boatner, as well as the testimony of the Claimant.

The definition of "disability" for Florida workers' compensation cases does not require a permanent incapacitation. The statute defines disability as, " the incapacity because of the injury to earn in the same or any other employment the wages the employee was receiving at the time of the injury. Case law provides 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, or from earning similar wages as a result of the covered conditions. Sledge v. City of Fort Lauderdale, 497 So.2d 1231 (Fla. 1st DCA 1986). This Court finds that the Claimant suffered "disability" by being incapacitated from performing his employment as a result of the heart disease conditions.

In addition, to meeting the disability requirement by establishing "incapacity", the Claimant alternatively, has met the disability standard by being unable to earn wages for the previously described periods of time, as a result of his cardiac conditions. The uncontroverted testimony is that the Claimant had to utilize sick leave, vacation time, and other accrued time he had earned, in order to pay himself during the period of disability.

Accordingly, this Court finds that the Claimant has suffered "disability" under either definition, as is contemplated under Florida Statutes §112.18.

6. This case involves heart disease in a law enforcement officer, who prior to beginning his employment with the Employer, successfully passed a pre-employment physical which failed to reveal any evidence of the claimed cardiac conditions, and from these covered cardiac conditions sustained disability. I find that the Claimant has met

the requirements to trigger the benefit of the presumption afforded under Florida Statutes §112.18, known as the "Heart/Lung" bill. He has established that: as a law enforcement officer, he is a member of the protected class; and having heart disease, he has established that he has a covered condition; he also successfully passed his pre-employment physical with no evidence of the claimed conditions; and he has sustained a disability as a result of these cardiac conditions. This Court finds that the "Heart/Lung" bill applies, and the Claimant is entitled to the presumption of work relatedness.

7. Although there appears to be a dispute between Dr. Mathias and Dr. Canto regarding whether or not the stress of Claimant's employment is a major risk factor in the development of coronary artery disease, it also appears that the legislature has answered that question in the affirmative with the enactment of Section 112.18. I found the Claimant to be a very credible witness and that all of the facts and medical evidence establish his entitlement to the 112.18 presumption.

Further, as neither IME physician could pinpoint the onset date of the heart disease, and both clearly testified there was no objective medical evidence to indicate that it preexisted the Claimant's employment with the City, this Court finds that the presumption applies. This Court finds that the Claimant's heart disease conditions are presumed to be a result of the Claimant's employment with the Employer, unless the Employer/Carrier can demonstrate "a specific, non-work related event or exposure" as was required by the Florida Supreme Court in Caldwell v. Division of Retirement, 372 So.2d 438 (Fla. 1979). Under these facts, Florida Statutes §112.18, indicates that a law enforcement officer's heart disease is presumed to have been the result of his

employment unless alternate causation can be demonstrated by competent evidence.

The medical and factual evidence regarding the compensability of Mr. Polk's' claim supports the presumption and is in favor of the Claimant. I find the Claimant has met each element for the presumption of work relatedness as required in the "Heart/Lung Bill".

8. As I have found that the Claimant has met his requirements to obtain the benefit of the presumption, the burden of proof shifts to the Employer/Carrier to overcome that presumption by competent substantial evidence. Where a law enforcement officer has successfully passed a pre-employment physical without evidence of heart disease, as here, the presumption goes into effect and can only be overcome by competent evidence. However, where there is evidence supporting the presumption, the burden is more stringent and the presumption may only be overcome by clear and convincing evidence, as explained by the Florida Supreme Court in Caldwell. The Court stated that in such circumstances, the presumption could only be overcome by clear and convincing evidence, and that, in the absence of cogent proof to the contrary, the policy in favor of job relatedness must be given effect. In that regard, it was further noted:

"That statutory presumption is an expression of a strong public policy which does not vanish when the opposing party submits evidence. Where the evidence is conflicting, the quantum of proof is balanced and the presumption should prevail." Caldwell at 441.

The medical testimony does show that the Claimant exhibited several of the known "risk factors" for the development of coronary artery disease. However, I do

find, consistent with the testimony of both Dr. Mathias and Dr. Canto, that there is a difference between a "risk factor" and a "causative factor". Risk factors simply indicate there is a possibility that an individual may develop a given condition. However, it is not a definite predictor that person will develop that condition. Conversely, a causative factor is a direct connection to the disease. It is a definite predictor of the condition. Both IME physicians acknowledged that they were unable to state with any reasonable degree of medical certainty that any of the risk factors exhibited by the Claimant caused his heart attack, heart disease, or coronary artery disease. Based on the deposition testimony of both IME physicians, this Court finds that the Employer/Carrier did not meet its burden to overcome the presumption The Employer/Carrier asserted and this Court acknowledges that the Claimant had a clear family history of coronary artery disease. More specifically, his mother, a severe diabetic, died of a heart attack when she was 50 years old. His father had a heart attack, as the Claimant stated, "At some point later in life". Eventually, his father died, at the age of 68, of a heart attack that occurred during his gall bladder surgery. However, the Claimant was only 39 years old at the time of his heart attack, and the Claimant's 37 year old brother exhibits no signs of heart disease. This is significant as his coronary artery disease began early in his life compared to the later onset of the disease for his parents. This Court finds that family history is only a possible risk factor and not a causative factor for development of coronary artery disease. There was no competent substantial evidence presented to establish that the cause of the Claimant's heart attack and coronary artery disease was due to his family history.

The Court recognizes the findings of the Florida Supreme Court in Caldwell v.

Division of Retirement, 372 So.2d 4378. In that decision, the Florida Supreme Court stated:

> "The statutory presumption is the expression of a strong public policy which does not vanish when the opposing party submits evidence. Where the evidence is conflicting, the quantum of proof is balanced and the presumption should prevail."

This Court finds the Employer/Carrier did not present "competent substantial evidence that convinces the undersigned that the cardiac disease conditions were caused by some non-work-related factor. While the Employer/Carrier did present evidence from Dr. Canto regarding risk factors, this Court finds that it was neither competent nor substantial and therefore, not persuasive to overcome the statutory presumption afforded under Florida Statute §112.18.

The testimony of Dr. Canto standing alone falls far short of competent evidence sufficient to overcome the presumption. Furthermore, the testimony of Dr. Canto must be balanced against that of Dr. Mathias. Since it is clear that the testimony of Dr. Mathias supports the presumption, the Claimant must prevail under Caldwell.

This Court finds the medical evidence presented by the Employer/Carrier, as to causation, does not provide either competent substantial or clear and convincing evidence sufficient to overcome the presumption. Neither physician could determine the precise etiology of the heart disease. Both testified that there is no way to scientifically or objectively determine the cause of the heart disease or even to rank in priority the relevant risk factors for the Claimant. Dr. Mathias further indicated that stress, shift work and adrenal increases can be considered a contributing factor in the development of these conditions, based upon multiple epidemiological studies. Dr.

Cantos could not rule this out.

The burden in this presumption case has been shifted by operation of law to the Employer/Carrier, it therefore becomes the Employer/Carrier's obligation to meet that burden. The courts have interpreted the burden of proof in occupational disease cases to require causal connection other than by merely showing that it is logical that the disease arose out of the claimant's employment or that by a preponderance of possibilities it appears it arose out of such employment. Instead, cases have held that there must be some clear evidence rather than speculation or conjecture establishing a causal connection between the disease and employment. I find that the Employer/Carrier has failed to carry its burden since all of the testimony offered to rebut the presumption of work relatedness has been based on speculation based on their expert's testimony.

Despite the literature attached to trial memorandum of the Employer/Carrier submitted as argument and included in the deposition exhibits of Dr. Canto, I find that there was not competent substantial evidence sufficient to overcome the presumption of Florida Statute 112.18. Accordingly, this Court finds that the Employer/Carrier has not shown by competent evidence that the Claimant's cardiac disease conditions are not work related given the presumed fact that they are.

In making its determinations, this Court has balanced the weight of the medical evidence, as outlined in Caldwell, to determine whether the presumption has been overcome. This Court finds the evidence supports the presumption, or, at worst is balanced, and has not been overcome by the Employer/Carrier, and therefore, I find that the Claimant, Cecil Polk prevails on the merits of this claim. Therefore, I do find

that the claim is compensable.

9. The Claimant has proved entitlement to temporary total disability benefits from May 16, 2006 through July 27, 2006. The uncontroverted evidence is that the Claimant was hospitalized on May 16, 2006, and underwent a series of operative procedures involving his cardiac system. During this period, he was on an "off work" status by his treating physicians. On follow up visit with Dr. Herweg on July 27, 2006, the Claimant was advised he could return to work in a limited capacity. At that point, he would no longer be entitled to temporary total disability benefits.

10. In addition, the Claimant has proved entitlement to temporary partial disability benefits from July 28, 2006 through September 14, 2006. As stated above, Officer Polk was released to light duty work on July 27, 2006. However, it is uncontroverted that the Employer had no light duty available for Officer Polk. Later, the Claimant's condition progressed to allow him to be able to return to full duty employment with the Employer on September 14, 2006, at which point, his entitlement to temporary partial disability benefits would terminate.

11. There is no dispute that the Claimant has sustained a permanent impairment from his coronary artery disease which resulted in a heart attack and its sequela, and is therefore entitled to permanent impairment ratings. Both IME physicians were in the same general range for the impairment rating related to the coronary artery disease. The Claimant is requesting the use of the 50% impairment rating per Dr. Mathias. However, I find that Dr. Canto performed some additional testing and also evaluated the Claimant several months after Dr. Mathias did. The Claimant's testimony is clear and uncontroverted that he has been compliant with

recommendations to maintain his fitness, which is shown by the amount of weight that the Claimant has lost since the injury as well as his performance on the treadmill stress tests that Dr. Canto requested be performed. Accordingly, Dr. Canto's rating of a 42% is the appropriate permanent impairment rating for the coronary artery disease. In addition, based on the subsequent testing, I accept Dr. Canto's date of April 1, 2007 as the appropriate date of maximum medical improvement.

Dr. Mathias also provided permanent impairment ratings for the cardiac arrhythmia, the cardiomyopathy, and the erectile dysfunction. Dr. Canto was not asked to rate these conditions separately. Accordingly, I accept Dr. Canto's rating of 42% for the coronary artery disease, however, I accept the uncontroverted ratings by Dr. Mathias of 20% for the cardiac arrhythmia, 25% for the cardiomyopathy, and 25% for the erectile dysfunction. However, the use of the combined value chart in the Florida Uniform Permanent Impairment Rating Schedule results in a combined permanent impairment rating of 74% when taking into account all four of these ratings.

12. As none of the indemnity or impairment benefits were timely provided, the Claimant is also entitled to receive penalties and interest on the payment of these benefits.

13. I had the opportunity to observe the candor of the demeanor of the Claimant as he testified during the hearing and I found the Claimant to be a very credible witness. I do not find that Claimant's statements regarding his family medical history made to medical providers, including IME physicians, constitute misrepresentations, and in any event those statements do not rise to a level so as to preclude the Claimant from receiving workers' compensation benefits. I therefore deny

that allegation by the Employer/Carrier.

14. I find that the Claimant is entitled to receive medical treatment with cardiologists from the Employer/Carrier for his heart related conditions stemming from his May 16, 2006 industrial injury.

15. The Claimant is not entitled to sanctions pursuant to Rule 60Q-6.125 and Florida Statute §440.32. The Court specifically finds no ill intent, impropriety or inappropriate behavior on behalf of the Employer/Carrier in its handling of this claim.

16. I am without jurisdiction to resolve the constitutional questions raised by the Employer/Carrier.

WHEREFORE, based upon the foregoing findings of fact and conclusions of law it is the Order of the undersigned Judge of Compensation Claims that:

1. The Claimant sustained a compensable industrial accident, as defined in Chapter 440 of the Florida Statutes, on or about May 16, 2006, and is entitled to certain benefits as provided by law.

2. The Claimant's cardiovascular conditions and their sequela are compensable pursuant to Florida Statutes §112.18, in conjunction with Chapter 440.

3. The Employer/Carrier shall authorize a cardiologist, and an electro physiologist, to provide the Claimant with continuing care and treatment for these work related conditions.

4. The Employer/Carrier shall pay temporary total disability benefits from May 16, 2006 until his release to limited work capacity on July 27, 2006. These benefits shall be paid together with penalties and interest.

5. The Employer/Carrier shall pay temporary partial disability benefits from July 28, 2006 until his return to full duty work with the Employer on September 14, 2006. These benefits shall be paid together with penalties and interest.

6. The Employer/Carrier shall pay impairment income benefits to the Claimant based on a 74% combined permanent impairment rating (utilizing the combined rating charts for the 42% impairment rating for coronary artery disease, 20% impairment rating for cardiac arrhythmia, 25% impairment rating for cardiomyopathy, and 25% impairment rating for erectile dysfunction,) based upon an MMI date of April 1, 2007. These benefits shall be paid together with penalties and interest.

7. The Employer/Carrier is responsible for the cost of the medical care and treatment provided to the Claimant relative to his cardiac conditions and their sequela. However, this Court does not have jurisdiction or authority to require the Employer/Carrier to reimburse the health care providers. This Court can attribute responsibility but has no jurisdiction to require reimbursement to a third party.

8. The Employer/Carrier shall provide ongoing appropriate benefits related to these compensable conditions.

9. The Employer/Carrier shall reimburse the Claimant for reasonable costs incurred in preparation for these proceedings.

10. The Employer/Carrier shall pay a reasonable attorney's fee relative to the benefits secured.

11. Any arguments or issues not raised at trial are hereby waived.

12. Jurisdiction is hereby reserved to determine the amount of attorney's fees and costs due the Claimant's Attorney from the Employer/Carrier, should the parties be

unable to reach agreement thereon.

DONE AND ORDERED at Ft. Myers, Lee County, Florida.

HONORABLE KATHY DEKOFF STURGIS
JUDGE OF COMPENSATION CLAIMS

I HEREBY CERTIFY that the foregoing Order was entered on this 14th day of January, 2008, and that a conformed copy was sent on that date by U.S. Mail to the parties and counsel at their addresses of record.

Shirley Blank
SECRETARY TO JUDGE STURGIS