STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF JUDGES OF COMPENSATION CLAIMS
FORT LAUDERDALE DISTRICT

MICHAEL HONES,	OJCC #:	07-000628 KSP
Employee/Claimant,	D/A:	10/24/06

v.

CITY OF PEMBROKE PINES and
GALLAGHER BASSETT SERVICES,
INC.,

Employer/Carrier.
_____/

Robert S. Winess, Esquire, Counsel for Employee/Claimant

Gregory G. Coican, Esquire, Counsel for Employer/Carrier

COMPENSATION ORDER

THIS CAUSE came before the undersigned Judge of Compensation Claims on October 15, 2009 in Broward County, Florida for a duly noticed final hearing. The hearing record closed on October 15, 2009.[1] The instant Compensation adjudicates outstanding issues in the Petition for Benefits filed on April 2, 2009. The

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[1] Since final hearing, Claimant filed two notices of supplemental authority and E/C filed a notice of supplemental authority. While the undersigned endeavors to meet the discretionary statutory time frames, the undersigned was unable to do so in the instant case due to work load. Since this case was tried, the undersigned conducted trials/evidentiary hearings in the following cases: 08-029251, 09-000847, 05-035661, and 07-004211. During the same time frame, the undersigned issued merit orders in the following cases: 02-018120, 08-025325, 08-011971, 05-027811, 02-022103, and 08-029251.

Employee/Claimant will be referred to by name or as "Claimant." The Employer and the Carrier will be referred to in their respective individual capacity or collectively as "E/C."

Claimant is an active duty police officer for the City of Pembroke Pines and has received workers' compensation benefits for hypertension pursuant to the application of the presumption afforded under Section 112.18, Florida Statutes, most commonly known as Florida's "Heart Bill." E/C now contests application of the presumption and this litigation ensued.

No one testified in person before the undersigned at final hearing. However, the following testimonial and documentary exhibits were admitted into evidence:

Judge's Comp. Ex. 1	Pretrial Stipulation and Amendments thereto
Clmt. Ex. 1	Depo. Theodosha King w/limited exhibits
Clmt. Ex. 2	PFB dated 12/18/06 and filed 1/8/07
Clmt. Comp. Ex. 3	Responses to PFB filed on 1/11/07 and 1/16/07
Clmt. Ex. 4	PFB dated 3/15/09 and field 4/2/09
Clmt. Ex. 5	Response to PFB filed on 4/7/09
Clmt. Ex. 6	First Report of Injury dated 10/27/06
Clmt. Ex. 7	Notice of Denial dated 7/25/09
E/C Ex. A	Depo. Dr. Spiller with exhibits
E/C Ex. B	Depo. of Claimant

The legal issue presented herein, as framed at time of final hearing, is whether the presumption afforded under Section 112.18, Fla. Stat. vanishes/ceases to apply so as to preclude benefits under Chapter 440 where the police officer has returned to work and is no longer disabled. E/C contends that Section 112.18, as narrowly and strictly applied, provides that the presumption applies where the heart disease is "resulting" in disability - that is, there must be an ongoing disability and actual incapacity to work. Additionally, E/C contends that the work is no longer the major contributing cause of the need for treatment and Claimant is at MMI. Claimant seeks attorney's fees and costs, which E/C contests on the basis that none are due and owing.

The undersigned considered all of the documentary and testimonial exhibits admitted into evidence, notwithstanding that there may not be an express recitation of same within the four corners of the instant Compensation Order, as well as resolved any material conflicts in the evidence, before rendering the following findings and conclusions:

1. The undersigned has jurisdiction over the parties and the subject matter.

2. In the Pretrial Stipulation admitted into evidence as Judge's Composite Exhibit 1, E/C marked "YES (10/24/06)" in response to #7, as to whether the "[a]ccident or occupational disease accepted as compensable." Jdg's Comp. Ex. 1 at p.2,#7. E/C further indicated at #9 that hypertension is accepted as related to the accident. Jdg's Comp. Ex. 1 at p.2,#9. E/C listed Memorial Hospital of Miramar and Dr. Dennis Spiller as medical treatment authorized in response to #17. Jdg's Comp. Ex. 1 at p.3,#17. Finally, at final hearing, counsel for E/C stipulated on the record that the elements of Section 112.18 presumption were met; accordingly, there was no need for Claimant to establish those elements.

3. Claimant testified via deposition taken on June 22, 2009 and admitted into evidence as E/C Exhibit B. Claimant works as a full-time patrolman for the Employer herein. E/C Ex. B at 8. Claimant started with the Employer herein as a law enforcement officer in 1991. E/C Ex. B at 30. Claimant testified that he took a pre-employment physical and did not show any sign of hypertension. E/C Ex. B at 31.

On October 24, 2006, Claimant was working and did not feel good. E/C Ex. B at 12. Claimant went to the fire station to get checked. E/C Ex. B at 12. Claimant's blood pressure was taken at the fire station. E/C Ex. B at 12. Claimant was

informed that his blood pressure was extremely high and that he would be transported to the hospital if he did not go on his own. E/C Ex. B at 12. Claimant testified that he drove to Memorial Pembroke while he was working. E/C Ex. B at 12.

Claimant was given medication and fresh oxygen at the hospital. E/C Ex. B at 13. Claimant thought he was there two or three hours and went home. E/C Ex. B at 13,14. Claimant could not recall whether he was given a doctor's note instructing him not to return to work. E/C Ex. B at 13, 33. However, Claimant testified that he was unable to perform the duties of a law enforcement officer on the date of the accident. E/C Ex. B at 32.

Claimant followed up with his regular physician, Dr. Batha, who is a general practitioner. E/C Ex. B at 14. Claimant testified that since the October 24, 2006 incident, Dr. Batha has been trying to get his blood pressure under control with medication. E/C Ex. B at 15, 16. Claimant testified that Dr. Batha had not restricted him from performing any of his duties as a police officer and he has been able to perform the duties required of the position. E/C Ex. B at 16, 17, 20-21.

Since the October 24, 2006 episode, there have not been any periods of time when Claimant was unable to work as a police officer. E/C Ex. B at 17. Dr. Batha referred Claimant to Dr. Upo, a cardiologist for a stress test and angiogram. E/C Ex. B at 17. Claimant's group health insurance paid for the professional services rendered by Drs. Batha and Upo. E/C Ex. B at 17-19. Workers' compensation referred Claimant to Dr. Spiller, also a cardiologist. E/C Ex. B at 17-18,29. Claimant saw Dr. Spiller two or three times. Dr. Spiller suggested fish oil and something else which he purchased, but discontinued on the advice of his regular doctor. E/C Ex. B at 19,28. Dr. Spiller did not

prescribe any medications. E/C Ex. B at 28. There has been no subsequent diagnosis of heart disease or heart condition. E/C Ex. B at 21.

Claimant testified that workers' compensation had been covering the medication(s) prescribed by Dr. Batha. E/C Ex. B at 29. Claimant further testified that workers' compensation had been covering the hypertension since shortly after the October 24, 2006 incident until several months ago. E/C Ex. B at 29.

4. Dr. Dennis Spiller, a cardiologist authorized by E/C, saw three times - December 18, 2006, May 12, 2008, and February 12, 2009. E/C Ex. A at 5. It appears that although Dr. Spiller did not see Claimant until December 18, 2006, E/C authorized Dr. Spiller as of November 17, 2006. E/C Ex. A at 38-39.

Dr. Spiller testified that as of December 18, 2006, hypertension was Claimant's main problem. The doctor noted that according to Claimant's history, Claimant had high blood pressure since 2003. E/C Ex. A at 10. Claimant was taking 100 mg. of Toprol-XL per day. E/C Ex. A at 10. Dr. Spiller's assessment was hypertension, stable and under good control. E/C Ex. A at 11. The doctor recommended Claimant continue with his present therapies. E/C Ex. A at 11.

Claimant returned to Dr. Spiller on May 12, 2008 as a follow up. E/C Ex. A at 12. Claimant informed Dr. Spiller that Dr. Upa performed a cardiac catheterization and "everything was normal." E/C Ex. A at 12. The doctor's assessment remained hypertension with stable cardiac status. E/C Ex. A at 12. Dr. Spiller recommended Claimant continue with his therapies and diet, follow up with his primary physician, and return for a follow examination in six months. E/C Ex. A at 12. Dr. Spiller did not

provide the prescription for Toprol, but the doctor believed that the primary physician was providing the prescription. E/C Ex. A at 12,44.

At some point after the May 12, 2008 and before the February 12, 2009 office visit, Dr. Spiller and defense counsel had a conference regarding the December 18, 2006 and May 12, 2008 office visits. E/C Ex. A at 13. Defense counsel prepared a letter dated February 19, 2009 which purports to "accurately reflect" the doctor's "medical opinions concerning the essence of those office visits." E/C Ex. A at 13-14. The doctor recognized his signature on the "Acknowledgment Provision" on page 3 of the letter. E/C Ex. A at 14. The doctor's deposition testimony and the matters set forth in the letter prepared by E/C counsel were consistent.

The last time Dr. Spiller saw Claimant was on February 12, 2009. At that time, Claimant's blood pressure was slightly elevated. E/C Ex. A at 15. Dr. Spiller recommended Claimant continue with the medication, as well as instructed Claimant to lose weight and stay on a strict low salt diet. E/C Ex. A at 15. The doctor also recommended some supplemental and nutraceutical therapies that have been associated with lowering blood pressure in a natural way. E/C Ex. A at 15. Dr. Spiller asked Claimant to follow up in six months. E/C Ex. A at 16.

Dr. Spiller placed Claimant at MMI as of December 18, 2006 with a 0% permanent impairment rating. E/C Ex. A at 16, 19. Dr. Spiller admitted that his MMI assessment was based upon a one-time blood pressure reading. E/C Ex. A at 19,33. The doctor assessed a 0% permanent impairment rating on the fact that Claimant did not have symptoms and the lack of evidence of hypertensive cardiovascular disease, etc. E/C Ex.

A at 36. The doctor did not assign any functional limitations or otherwise restrict Claimant's activities. E/C Ex. A at 17.

Dr. Spiller testified that Claimant has essential hypertension, arterial in nature, which does not have a precise cause. E/C Ex. A at 11, 20, 26. The doctor testified that he expected Claimant's blood pressure to go up if Claimant stopped taking the hypertension medication. E/C Ex. A at 42-43. Dr. Spiller further testified that if Claimant's blood pressure was still elevated when he saw Claimant as scheduled later in the same day the deposition was taken (August 19, 2009), he would prescribe additional drug therapy. E/C Ex. A at 45.

5. The adjuster, Theodosha King, testified via deposition admitted into evidence as Claimant's Exhibit 1. Ms. King is a senior claims representative and has been adjusting workers' compensation claims for approximately 28 years. Clmt. Ex. 1 at 7. Ms. King agreed that this case has been adjusted pursuant to Florida's Heart Bill under Section 112.18, Fla. Stat. Clmt. Ex. 1 at 9,12. The adjuster testified that the Carrier was first notified of the injury on October 31, 2006. Clmt. Ex. 1 at 10. There was one other adjuster before Ms. King took over the file. Clmt. Ex. 1 at 12. Ms. King took over the handling of the file on November 13, 2006 because of legal representation. Clmt. Ex. 1 at 12.

Ms. King testified that as of the date of the deposition (Sept. 16, 2009), no indemnity benefits were paid. Clmt. Ex. 1 at 23. Medical benefits were first paid on December 26, 2006. Clmt. Ex. 1 at 24. February 12, 2009 is the last date medical benefits were paid. Clmt. Ex. 1 at 24. Accordingly, E/C paid medical benefits on this claim for approximately two years and three months. Clmt. Ex. 1 at 24.

According to the DWC 1 (notice of injury), the description of accident states high blood pressure, which was first reported on October 24, 2006. Clmt. Ex. 1 at 26. The DWC 1 reflects Memorial Miramar as the hospital, which the adjuster agreed was authorized by the employer. Clmt. Ex. 1 at 26-27. Ms. King testified that she requested her assistant to send out a 120 day letter, which was done by letter dated November 14, 2006. Clmt. Ex. 1 at 66-68. Ms. King admitted that she understood the first Petition for Benefits dated December 2006 to be a claim for benefits under the Heart Bill and that benefits were so authorized. Clmt. Ex. 1 at 30,31. Ms. King prepared a response to the Petition for Benefits in January 2007 which stated that "[m]edical care with the cardiologist was provided prior to the filing of this PFB." Clmt. Ex. 1 at 31; see also 68. Benefits were provided from at least November 14, 2006 up to at least November 2, 2008 with no denial being filed during that two year period. Clmt. Ex. 1 at 68.

Ms. King testified that the decision was made to terminate Claimant's benefits on or about November 2, 2008. Clmt. Ex. 1 at 36-37. Claimant filed another Petition for Benefits on or about April 2, 2009, which Ms. King recognized to be a claim for benefits under the Heart Bill. Clmt. Ex. 1 at 41. The adjuster acknowledged that Claimant was seeking a determination of compensability of Claimant's hypertension/heart disease, as well as the provision of a board certified cardiologist. Clmt. Ex. 1 at 43.

Ms. King filed a response to the Petition for Benefits on April 7, 2009 which denied the claims stated in the April 2, 2009 Petition for Benefits. Clmt. Ex. 1 at 44. Ms. King explained that the response was filed because there was no lost time or disablement, no restrictions were imposed, Claimant was at MMI with a 0% permanent

impairment rating, and the presumption ended. Clmt. Ex. 1 at 45. The witness explained that there was no lost time authorized by a treating physician in excess of seven (7) days. Clmt. Ex. 1 at 47. Ms. King testified that if there is no disablement, restrictions, or modified work condition, the presumption ends. Clmt. Ex. 1 at 47-48, 50. Claimant further testified that the major contributing cause for the continued need for medical care is personal in nature, relying on Dr. Spiller's note that reflects hypertension as a pre-existing condition which Claimant had since 2003, even though there was no indication of hypertension in the pre-employment physical. Clmt. Ex. 1 at 59,60, 62, 63. Ms. King filed a notice of denial in July, 2009, even though she admitted that nothing fundamentally changed between 2006 when the case was picked up and 2009. Clmt. Ex. 1 at 69,79.

Ms. King testified that she understood disablement under the Heart Bill cases as being authorized to be out of work in excess of seven (7) calendar days by an authorized treating physician or a person who is incapable of performing his/her duties as a fire fighter or police officer. Clmt. Ex. 1 at 70, 71,78. Ms. King later clarified that the seven days disablement is required to be entitled to indemnity benefits, not medical. Clmt. Ex. 1 at 79. The adjuster stated that she was not aware that a person is eligible for medical only benefits under the Heart Bill. Clmt. Ex. 1 at 78. Ms. King further testified that once the injured police officer or fire fighter returns to normal duties - regardless of whether the person was out one day or one year, the disablement ends. Clmt. Ex. 1 at 73.

6. Section 112.18, Fla. Stat. (2001), provides in relevant part that "[a]ny condition or impairment of health ... caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability ... shall be presumed to have been

accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence." This statutory provision initially pertained to firefighters only, then was expanded by the legislature to include police officers and other occupations. This provision has covered the same conditions, i.e. tuberculosis, heart disease and hypertension, for years.

The Supreme Court of Florida enunciated that the statutory presumption afforded under Section 112.18, Fla. Stat. is an expression of social policy that affects the burden of proof in that it obviates the need for the law enforcement officer or firefighter to establish the enumerated diseases in the statute [i.e. tuberculosis, heart disease, and hypertension] were occupational hazards. See Caldwell v. Div. of Retirement, 372 So. 2d 438 (Fla. 1979); Talpesh v. Village of Royal Palm Beach, 994 So. 2d 353 (Fla. 1st DCA 2008) (presumption relieves a claimant from the necessity of proving an occupational causation of the disease). The statute was enacted in recognition of the special hazards encountered by firefighters and law enforcement officers, and should be interpreted in a manner consistent with the beneficial purposes intended. See City of Clearwater v. Carpentieri, 659 So. 2d 357 (Fla. 1st DCA 1995).

The undisputed evidence is that on October 24, 2006, while on duty, Claimant did not feel well and went to the fire department to be checked. Claimant's blood pressure was elevated to a level where Claimant was instructed to go to the hospital or he would be transported there. Claimant complied and went to the emergency room, where he was given medications and fresh oxygen, then released. Claimant did not return to work that day. Although Claimant could not recall whether he was given a doctor's note to stay off work, a fax sheet dated October 26, 2006 from Patricia Acosta in Risk

Management to the Carrier herein reflects that although the notice of injury "indicates that Officer Hones returned to work on 10/25/06 - he didn't. He saw his PCP who advised him to remain out-of-work on 10/25/06." E/C Ex. A, Clmt. Comp. Ex. 1 attached thereto.

It is unrefuted that after the October 24, 2006 incident, E/C herein exercised its right under Section 440.20, commonly referred to the "pay and investigate" provision that allows the carrier 120 days to investigate compensability of an accident while it provisionally provides workers' compensation benefits to the injured worker during that time period. It is further unrefuted that E/C did *not* deny compensability within 120 days, and in fact provided Claimant with authorized cardiac care for over two (2) years! In addition, E/C stipulated on the Pretrial Stipulation that it accepted hypertension as related to the industrial accident and further stipulated on the record at final hearing that the elements of the Section 112.18 presumption were met. These undisputed facts compel a conclusion that E/C waived its right to now contest its obligation to furnish benefits on the basis that the presumption under Section 112.18, Fla. Stat. does not apply.

7. E/C further contends that the presumption afforded under Section 112.18(1) should be narrowly and strictly applied because the provision requires that there must be an ongoing and actual incapacity to work, i.e. "resulting in total or partial disability...." (emphasis added). As applied to the instant case, E/C contends that Claimant is no longer disabled because he is working full time with no restrictions, so he is no longer entitled to benefits pursuant the Section 112.18 presumption. Such a narrow and strict application is in direct contravention of the underlying principle to interpret the

provision in a manner consistent with the beneficial purposes intended by the Legislature's enactment of the presumption. E/C's position is completely inconsistent with its earlier stance because it already accepted Claimant as meeting the requisite criteria under the Heart Bill after the October 24, 2006 industrial incident. The fact that Claimant is at MMI does not compel a contrary conclusion - as an injured worker is still entitled to palliative care after MMI.

Further, E/C exercised its rights under the 120 day pay and investigate provision, but did *not* deny compensability - rather it authorized care for over two (2) years thereafter. Given E/C's ultimate acceptance of the claim and its provision of cardiac medical care for more than two (2) years thereafter, E/C certainly waived its right to now assert that Claimant did not suffer a disablement as a result of the 2006 compensable accident. See City of Port Orange v. Sedacca, 953 So.2d 727 (Fla. 1st DCA 2007).

8. The presumption afforded under the Heart Bill applies for the October 24, 2006 date of accident. It did not "vanish" when Claimant returned to work without restrictions or reached MMI. There is no evidence of sufficient weight to persuade the hypertension was due to a non-industrial cause. See Punsky v. Clay County Sheriff's Office, 34 Fla. L. Weekly D516 (Fla. 1st DCA 3/6/09).

It appears through the actions taken by E/C herein that it is trying absolve itself of its obligation to pay for the medication prescribed to address the hypertension. The actions taken by E/C herein have been inconsistent with the letter and spirit of both Section 112.18 and Chapter 440. The stance taken by E/C herein penalizes Claimant for

taking his medication to keep his hypertension under control so that he is able to work full duty as a law enforcement officer protecting the citizens of Pembroke Pines.

E/C's authorized cardiologist, Dr. Spiller, has not prescribed medications because Claimant's primary physician under group health, Dr. Batha, has issued the prescriptions. Yet, for over two years, E/C herein has been paying for the hypertension medications prescribed by the "unauthorized" primary care physician. E/C issued a "denial" in July, 2009, yet Claimant had an appointment with Dr. Spiller, the "authorized" cardiologist, later the same day Dr. Spiller was deposed on August 16, 2009. Dr. Spiller testified that Claimant's blood pressure would go up if he did not take the medication.

9. In the Pretrial Stipulation, the claim stated was for "[m]edical care and treatment of the claimant's hypertension under the supervision of a board certified cardiologist." Jdg's Comp. Ex. 1. E/C raised numerous defenses in the Pretrial Stipulation, including that the October 24, 2006 accident is no longer the major contributing cause of the Claimant's condition for which treatment is sought. Jdg's Comp. Ex. 1. However, at final hearing, the matter presented for determination was presented as a legal issue as to the applicability of the Section 112.18 presumption. At final hearing, E/C stated on the record it would provide a cardiologist, subject to its right to appeal, in the event that the legal question is decided in Claimant's favor. No other specific medical benefit has been requested in this proceeding. Although Claimant is at MMI per the evidence in this case, he is still entitled to palliative care for the hypertension. The legal question has been decided in Claimant's favor, so subject to E/C's right to appeal, remaining issues raised by E/C are deemed moot.

10. Claimant's counsel is entitled to reasonable attorney's fees, and Claimant is entitled to recover reasonable costs, for legal services rendered and costs incurred in securing the favorable determination of application of the presumption under the Section 112.18 Heart Bill. The undersigned retains jurisdiction over all issues relating to attorney's and costs. Based on the foregoing, it is hereby

ORDERED AND ADJUDGED as follows:

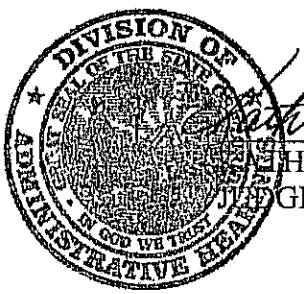
1. The presumption under the Section 112.18 Heart Bill applies to the October 24, 2006 date of accident.

2. Claimant's counsel is entitled to reasonable attorney's fees, and Claimant is entitled to recover reasonable costs, for legal services rendered and costs incurred in securing the favorable determination of application of the presumption under the Section 112.18 Heart Bill.

3. The Petition for Benefits filed on April 2, 2009 is dismissed with prejudice.

4. The undersigned retains jurisdiction over all issues relating to attorney's and costs.

DONE AND ORDERED in Chambers, Lauderdale Lakes, Broward County, Florida.



Kathryn S. Pecko

KATHRYN S. PECKO
JUDGE OF COMPENSATION CLAIMS

ADDENDUM TO ORDER

Counsel shall furnish a copy of this Order to their respective clients to ensure timely compliance.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order was furnished this 11th day of December, 2009 by electronic transmission to the parties' counsel of record.

Shanetta Brown
Secretary to the Judge of Compensation Claims