STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
PORT ST. LUCIE DISTRICT OFFICE

Brian Gonzalez,
Employee/Claimant,

vs.

St. Lucie County Fire District/Florida Municipal Insurance Trust,
Employer/Carrier/Servicing Agent.
_____/

OJCC Case No. 14-026367RDM

Accident date: 9/4/2013

Judge: Robert D. McAliley

FINAL COMPENSATION ORDER ON REMAND

Claimant, a firefighter for the St. Lucie County Fire District, experienced an episode of atrioventricular nodal reentry tachycardia (AVNRT) while in the performance of his duties. The primary issue considered at a merits hearing was whether this occurrence was compensable under the Workers' Compensation Law pursuant to the occupational causation presumption afforded by section 112.18 (1) (a), Florida Statutes (2013) (hereinafter, "statutory presumption"). Secondary issues included a general claim for further medical care and the payment of a small emergency room bill.

In a final order dated June 29, 2015, I determined, *inter alia,* the statutory presumption was inapplicable and that claimant could not otherwise establish the compensability of his claim. This order was appealed to the district court.

The appellate court reversed finding it was necessary to make an evidentiary determination not only as to the cause of any abnormality to the heart but also whether claimant's job duties, either by medical evidence or operation of the statutory presumption, were the triggering event of the AVNRT. *Gonzalez v. St. Lucie County Fire Dist.*, 41 Fla. L. Weekly

D589 (Fla. 1st DCA 2016) ("In other words, although the congenital nature of the physiological abnormality is sufficient to rebut the presumption, the cause of the trigger must also be determined.").

On March 8, 2016, the district court issued its mandate requiring the compensability of this case be reconsidered in light of its instructions. The court pointed out that its recent opinion in *Mitchell v. Miami Dade County,* 186 So. 3rd 65 (Fla. 1st DCA 2016) should serve as a guide. ("We, therefore, reverse and remand for further consideration in accordance with the analysis set forth in *Mitchell II* and this opinion." (emphasis deleted)). Accordingly, I find the judge of compensation claims (JCC) has jurisdiction over the parties and subject matter.

A conference was conducted with the attorneys for the parties. No further evidence was taken. However, E/C requested leave to retake the deposition of its medical expert, David E. Perloff, M.D., to further address the question of whether claimant's job duties were the triggering event of the AVNRT episode. E/C argues that inasmuch as the district court instructed that *Mitchell II* serve as a guide and that *Mitchell II* allowed for the reopening of evidence, the same be permitted here.

I disagree. Initially, I determine that if the district court believed it appropriate to reopen the evidence, the court would have said so in its opinion dealing with the present case. To allow the reopening of evidence would exceed the JCC's authority on remand. What is more, while I can appreciate that there may be further questions to put to the medical experts, the evidence is presently sufficient.

As outlined in the June 2015 merits order, and discussed in the *Gonzalez* decision, I reject the testimony of claimant's medical expert, Steven Borzak, M.D., that claimant's work activities

were the triggering event of his developing AVNRT on September 4, 2013. Dr. Borzak testifies AVNRT was prompted by "presumably" elevated levels of adrenaline prompted by claimant's job duties. No explanation is proffered why over the course of 13 years, and after almost assuredly having many occasions both on and off the job to experience raised adrenaline levels, AVNRT was prompted on this particular occasion. This opinion also runs counter to Dr. Borzak's analysis of laboratory testing indicating tachycardia could only be induced in claimant with high sustained adrenaline levels.

Although this is an otherwise irrelevant observation, I further find Dr. Borzak's impairment rating equating the ablation procedure undergone by claimant with the installation of a pacemaker to be far-fetched. This finding, however, does go to assessing Dr. Borzak's general credibility. (In reaching this finding I am mindful there is a pending petition for income impairment benefits pursuant to section 440.15 (3). However, that claim will not be decided by the undersigned.).

Hence, I find claimant fails to present competent, substantial medical evidence supporting the statutory presumption. E/C, therefore, may potentially rebut the statutory presumption with competent, substantial evidence. *See Johns E Co. v. Bellamy*, 137 So. 3d 1058, 1059 (Fla. 1st DCA 2014).

I find that Dr. Perloff, in essence, does not have an opinion based on reasonable medical certainty as to the triggering event for the AVNRT experienced in this instance. This board certified cardiologist states physical exertion "certainly can trigger AVNRT." As far as emotional stress is concerned, Dr. Perloff agrees it is possible but is unaware of any studies on point. The doctor is not asked to address the question of whether the combination of mental and

emotional distress can be the triggering episode.

Reflecting on this testimony, and noting that even in a technical medical case the JCC is not required to put aside common sense, one wonders if this witness is ever been frightened, asked a girl out on a first date, experienced stage fright, et cetera.

In any event, I determine that the essence of Dr. Perloff's testimony is that he has no opinion as to whether claimant's job duties prompted the episode of AVNRT in this instance. *Compare Hunt v. Exxon Co., USA*, 747 So.2d 966, 972 (Fla. 1st DCA 1999) ("When a single medical expert testifies concerning a particular medical question such as causation, and that expert's opinion appears vague or conflicting, it is incumbent upon the judge of compensation claims to consider *all* of the testimony so as to distilled the essence of the expert's opinion.") (emphasis quoted).

Inasmuch as I determine there is no competent, substantial evidence as to the cause of claimant's episode of AVNRT on this date of accident, the statutory presumption controls. *See Punsky v. Clay County Sheriff's Office*, 18 So. 3rd 577 (Fla. 1st DCA 2009). Accordingly, the AVNRT event occurring to claimant on September 4, 2013, is compensable under the Workers' Compensation Law.

As to the claim for future medical care, it appears the ablation procedure addressing the underlying abnormality, duel AV node physiology, most likely eliminated the possibility of any further episodes of AVNRT. However, Dr. Borzak advises that in about 5% of the cases the ablation is incomplete so that the possibility claimant will require further medical care remains. This question was not definitively addressed by Dr. Perloff (these are only two physicians testifying in this case). Therefore, claimant is entitled to further medical care as the nature of his

injury or the process of his recovery may require.

At the onset of the merits hearing, the parties agreed to resolve the medical bills administratively.

WHEREFORE, it is

ORDERED AND ADJUDGED as follows:

1). Claimant's episode of AVNRT occurring September 4, 2013, is compensable pursuant to the Workers' Compensation Law.

2). The employer/carrier shall provide claimant additional medical care, if any is necessary as it relates to the ablation treatment, as the nature of his injury or the process of recovery may require the time and manner provided by law.

3). The employer/carrier shall pay for claimant's medical services rendered at Palm Beach Gardens Medical Center, adjusting same administratively in accordance with the parties' agreement.

4). Jurisdiction is reserved to determine all outstanding issues pertaining to attorney's fees and costs.

DONE AND ORDERED this 25th day of April, 2016, in Port St. Lucie, St. Lucie County, Florida.

Robert D. McAliley
Judge of Compensation Claims
Division of Administrative Hearings
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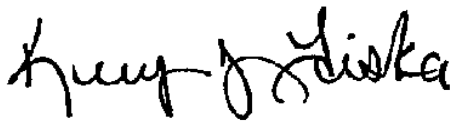
CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing has been e-mailed to Counsel on April 25th, 2016.



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Secretary to Judge of Compensation Claims

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