TATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
JACKSONVILLE DISTRICT OFFICE

Adrian O'Neal,
Employee/Claimant,

vs.

City of Jacksonville/City of Jacksonville Risk Management,
Employer/Carrier/Servicing Agent.

/

OJCC Case No. 13-010582RJH, 13-017921RJH, 14-015444RJH, 14-028284RJH

Accident date: 1/10/2013

Judge: Ralph J. Humphries

FINAL COMPENSATION ORDER

This Cause came on for a merits' hearing before the undersigned Judge of Compensation Claims on **October 21, 2016** in Jacksonville, Duval County, Florida. The subject matter of this hearing was a petition for benefits filed on September 30, 2014 and a petition for benefits filed on December 9, 2014. A mediation conference on the petitions was held on January 20, 2015. The claimant, **Adrian O'Neal**, was present and represented by John Rahaim, Esquire. The employer/carrier, **City of Jacksonville/City of Jacksonville Risk Management**, hereinafter referred to as the "Employer" or as the "E/C" was represented by Michael Arington, Esquire and Alexander Makofka, Esquire. Live testimony was received from the claimant. Additional testimony was received by way of depositions.

The following stipulations have been reached between the parties:

1. The court has jurisdiction of the parties;
2. Venue properly lies in Duval County, Florida;
3. There was an employer/employee relationship at the time of the alleged accident;
4. Workers' compensation insurance coverage was in effect on the date of alleged accident;
5. Timely notice of the final hearing has been given;
6. The employer/carrier has accepted as compensable the accidents of January 10, 2013 (originally filed as case number 13-10582) and the accident of April 2, 2014 (originally filed as case number 14-15444). As to each accident, the employer/carrier has agreed to

authorize Dr. Michael Koren to provide medical treatment for the time and in the manner provided by law. Employer/carrier also stipulates claimant's counsel is entitled to a reasonable attorney's fees and taxable costs for securing these benefits.

The substantive claims for determination at the current merits' hearing are the following:

1. Compensability of claimant's arrhythmias for both alleged dates of accident;
2. Medical treatment with a board certified cardiologist for claimant's arrhythmias;
3. Costs and attorney's fees.

The defenses raised by the E/C were the following:

1. Compensability of claimant's arrhythmias is denied because the statutory presumption found in Florida Statute §112.18(1) will be rebutted by evidence of non-work causes;
2. Claimant did not suffer an accident in the course and scope of employment;
3. Medical treatment with a board certified cardiologist is denied for the reasons expressed in 1 and 2 above;
4. Costs and attorney's fees are not due or owing.

The following documents were admitted into evidence at the current hearing:

Judge's Exhibits:

1. Petition for Benefits filed with DOAH on September 30, 2014;
2. Petition for Benefits, filed with DOAH on December 9, 2014;
3. Pretrial Questionnaire completed by the parties and filed with DOAH April 28, 2015;
4. Claimant's Prehearing Statement admitted for purposes of argument only and not as evidence, filed with DOAH on October 19, 2016;
5. Employer/Carrier's Trial Memorandum admitted for purposes of argument only and not as evidence, filed with DOAH on October 19, 2016.

Claimant's Exhibit:

1. Deposition of Dr. Mathias filed at docket #151;

2. Medical records provided Dr. Mathias from Dr. Orello found at docket #179;
3. Medical records from Jacksonville Health Care Group found at docket #168;
4. Deposition of Dr. Sultan with attachments found at docket #165;
5. Medical records from Dr. Carter found at docket #170;
6. IME report from Dr. Dietzius found at docket #177;
7. St. Vincent's medical records found at docket #171;
8. Diagnostic Cardiology medical records found at docket #161.

Employer's Exhibits:

1. Dr. Quadrat deposition with attachments found at docket #167.

Joint Exhibits:

1. Dr. Nabert deposition with attachments found at docket #120 and 163;
2. Dr. Oza deposition with attachments found at docket #162-164.

In my determination herein I have attempted to distill all the testimony and salient facts together with the findings and conclusions necessary to the resolution of this matter. I have not necessarily attempted to summarize the substance of the claimant's testimony or the testimony of any live or deposition witness, nor have I attempted to state nonessential facts.

Because I have not done so should not be construed that I have failed to consider all of the evidence.

Based upon the evidence, I make the following findings of fact and conclusions of law:

1. I have jurisdiction of the parties and the subject matter.
2. The stipulations of the parties are accepted and adopted by me as findings of fact.
3. The evidence closed in this matter on October 21, 2016 after which closing arguments were made by the parties.
4. **June 26, 2002 date of accident:** On this date, Dr. David Nabert, a cardiac electrophysiologist, was treating the claimant as a result of heart arrhythmia or rapid heart rate. The claimant underwent a cardiac catheterization which involved placing

catheters through a large vein in the groin leading to the heart. These wires are placed in order to measure electrical impulses and try to re-create potentially bad heart rhythms. (Nabert deposition page 21). During the course of this procedure, Dr. Nabert induced a left-sided atrial tachycardia as well as atrial fibrillation. He concluded the claimant had a left atrial tachycardia coming from the top chamber on the left side. This is the same chamber producing claimant's atrial fibrillation. The atrial tachycardia is a regular fast heart rate whereas the atrial fibrillation is an irregular fast rhythm. In the claimant's case, the atrial tachycardia triggered the atrial fibrillation. (Nabert deposition page 22-23).

5. In order to try to cure that condition, a complex ablation, called a pulmonary vein isolation, was necessary. On June 26, 2002, this was a relatively new procedure and too complex to perform in most clinical settings. Dr. Nabert testified he was not prepared or equipped to go forward with this procedure thus he terminated the ablation procedure and treated the claimant with Flecainide, a medication intended to control claimant's heart rhythm.

6. The employer/carrier argues there is no compensable accident for the June 26, 2002 event because the claimant was not disabled as contemplated under Florida Stat. §112.18(1) and also because the claimant did not have an accident as defined in Florida Stat. §440.02(1). As to the latter issue, I reject the argument made by the employer/carrier. No case law has been offered nor any identified by me that requires there to be an accident as defined in §440.02(1) as a prerequisite to a compensable condition under §112.18(1). The Supreme Court in *Caldwell v. Division of Retirement, 372 So.2d 438, 441 (Fla. 1979)* held the presumption found in §112.18 (1) relieves first responders of the necessity of proving causation of the disease and "cast on the employer the burden of persuading the trier of fact that the disease was caused by a non-occupational related agent." To be entitled to such presumption, it is the claimant's burden to prove each of four elements: (1) he/she is a member of the protected class; (2) he/she passed a pre-employment physical indicating the disease was not then present; (3) he/she has since such time been diagnosed with the disease; and (4) the disease has resulted in disability. The statute itself says that if those criteria are met, the condition "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." (Emphasis added). Thus I conclude the claimant need not present any evidence of "an unexpected or unusual event or result that happens suddenly" in order to present a prima facie case of

compensability.

7. The employer/carrier having stipulated the claimant is a member of the protected class, has passed a pre-employment physical indicating the claimant's condition was not then present and that he has been diagnosed with a covered condition, I must determine whether the claimant was disabled on and after June 26, 2002. From the testimony and evidence, I find the claimant was required to undergo a cardiac catheterization on June 26, 2002 as a result of his atrial fibrillation. For the reasons set forth hereinafter, I find he was disabled on that date. In the case of *Rocha v. City of Tampa, 100 So.3d 138 (Fla. 1st DCA 2012)* the issue, as here, was whether the Claimant proved his condition resulted in total or partial disability as required by F.S. 112.18(1). The *Rocha* court framed the issue as follows: "[W]hether a claimant can rely solely on a medical work restriction to prove disability for purposes of section 112.18…" Id. at 141. In its analysis, the court recognized there are individuals who might "retain the physical strength and coordination to perform" the job but are given work restrictions to avoid potential further injury or death due to heart disease or hypertension. In finding Rocha was disabled, the court stated: "To hold otherwise would encourage such a claimant to ignore the advice of his doctor in fear that a panel of judges years hence might deem the work restriction unwarranted. Further, it would encroach upon the doctor-patient relationship, and violate both the basic tenets of public safety and the clear purposes of the Workers' Compensation Law." Rocha at 142.
8. Consistent with the holding in *Rocha*, I find that O'Neal was disabled from working during and immediately following his catheterization, the performance of which was directly related to his arrhythmia and atrial fibrillation. According to Dr. Patrick Mathias, the claimant's IME physician, O'Neal would have been "absolutely" disabled from performing his job as a corrections officer as a result of the attempted ablation on June 26, 2002. As testified to by Dr. Mathias, the "procedure requires several punctures in the groin to advance wires were catheters up into the heart. So when my patients have an EP procedure, especially if there in a job that requires sudden heavy exertion, like a corrections officer, I keep them off for at least 7 days." There being no competent evidence to the contrary, I find Claimant was disabled on and after June 26, 2002 and has established a factual basis to support the presumption for compensability of his atrial fibrillation.
9. The statutory presumption having been met, I now consider whether the presumption is

rebutted as a result of the defense raised by the E/C that claimant's condition is as a result of non-work related causes. Both IME physicians, Dr. Mathias and Dr. Quadrat opined, and there is no dispute, the claimant had an underlying genetic condition which was the underlying cause of the claimant's arrhythmias. The evidence also establishes there must be a "trigger" of the underlying genetic condition to result in the arrhythmias. Case law instructs us that "a congenital condition can be aggravated. See *City of Temple Terrace v. Bailey, 481 So.2d 49, 51 (Fla. 1st DCA 1985)*. The evidence necessary to overcome the presumption must be medical evidence. See *Fuller v. Okaloosa Corr. Inst., 22 So.3d 803, 806 (Fla. 1st DCA 2009)*. It is not necessary for the employer to identify a single non-occupational cause in order to overcome the presumption. See *Punsky, 18 So.3d at 584.* If the expert medical testimony establishes, for instance, that there are one or more possible non-occupational causes for the trigger, or there are no known occupational causes, this testimony, if accepted by the JCC, could overcome the presumption. On the other hand, if the JCC declines to accept this contrary evidence, then the presumption will support a ruling in favor of the claimant." *Mitchell v. Miami-Dade County, 186 So. 3d 65 (Fla. 1st DCA 2016).* Based upon the testimony of Dr. Mathias, I find there are identifiable occupational causes of the triggering mechanism for the arrhythmias, adrenaline in the form of stress being the most likely occupational cause. (Dr. Mathias deposition p. 15)

10. The employer/carrier argues, based upon the testimony of Dr. Quadrat, that hyperthyroidism and alcohol consumption are the triggers for the claimant's arrhythmia in 2002. Under the authority set forth in *Mitchell,* if I conclude either or both conditions were the triggers of claimant's arrhythmia, the statutory presumption would be rebutted and the claim would fail since it is based exclusively on the presumption and not on any identifiable occupational cause. Nevertheless, I reject the opinions expressed by Dr. Quadrat since I find insufficient factual basis to support the existence of hyperthyroidism in June 2002 or any competent evidence of the amount of, if any, alcohol consumed by the claimant prior to June 26, 2002. Dr. Quadrat's factual premise is based upon history the claimant gave Dr. Quadrat regarding his current level of alcohol consumption combined with history related to Dr. Oza that the claimant drank 2-3 drinks per day in 2014. There is simply no evidence but only speculation concerning the amount of alcohol consumed, if any, by claimant in 2002. Furthermore, I accept the opinions offered by Dr. Mathias that alcohol does not contribute to the development of left atrial

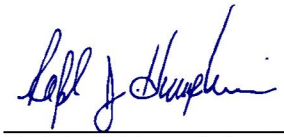
tachycardia, the end product of the arrhythmias suffered by the claimant. (Deposition p. 60) He also did not see any evidence of cardiac damage resulting from alcohol in the records reviewed. Thus, to the extent the opinions conflict, I accept the opinions of Dr. Mathias over those of Dr. Quadrat and find that alcohol was not a trigger of the claimant's congenital condition.

11. I also accept the opinions of Dr. Mathias over those of Dr. Quadrat as to the presence (or absence) of hyperthyroidism in 2002. It is important to note even Dr. Quadrat agreed hyperthyroidism was not diagnosed by a physician to exist in the claimant until 2011. While Dr. Quadrat made vague reference to laboratory studies and ill-defined and subjective reports regarding hair and skin condition in support of his conclusion of hyperthyroidism in 2002, Dr. Mathias identified laboratory records from April 30, 2002 and February 19, 2004 clearly establishing claimant's thyroid was functioning within normal limits. I find the opinions of Dr. Quadrat are without competent evidence to support those opinions and they are rejected.
12. I find, based upon the evidence presented, the E/C has failed to meet its burden of proof that either alcohol use or hyperthyroidism triggered claimant's congenital condition causing his arrhythmia on June 26, 2002. There being no competent evidence sufficient to rebut the statutory presumption O'Neal's arrhythmia is compensable, I find that to be a compensable condition.
13. **August 28, 2014 date of accident:** Both Dr. Mathias and Dr. Quadrat opined the arrhythmia for which the claimant was treated on August 28, 2014 was the same condition as that condition for which the claimant was treated on June 26, 2002. (Depositions of Dr. Quadrat p.15 and Dr. Mathias p. 65) Thus I conclude the claimant has not sustained a new accident or compensable condition on that date and the claims associated with the August 28, 2014 event are denied.
14. I find that the claimant's attorney has performed a valuable service and is entitled to an award of a reasonable attorney's fee and taxable costs against the employer for securing compensability of claimant's June 26, 2002 date of accident and the benefits flowing there from.
15. Any and all issues raised by way of the petition for benefits, but which issues were not dismissed or tried at the hearing, or which were ripe, due and owing but not raised at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the claimant, and therefore, are denied and dismissed with prejudice.

Wherefore, It Is CONSIDERED, ORDERED, and ADJUDGED as follows:

1. The claim for compensability of the claimant's June 26, 2002 accident is hereby granted.
2. The claim for compensability of the claimant's August 28, 2014 arrhythmia is denied.
3. The claim seeking authorization of a cardiologist to treat the claimant's arrhythmia is granted.
4. The E/C shall pay a reasonable attorney's fee and taxable costs to the claimant's attorney for securing the benefits being awarded by this Compensation Order. Jurisdiction is hereby reserved to determine the amount thereof if the parties are unable to amicably resolve this issue.

DONE AND SERVED this 15th day of November, 2016, in Jacksonville, Duval County, Florida.



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