

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ORLANDO DISTRICT OFFICE

Lance Fisher,
Employee/Claimant,

OJCC Case No.: 24-015454TSS

vs.

Accident date: 02/17/2024

City of Palm Bay Police
Department/Davies Claims North America,
Inc.,
Employer/Carrier/Servicing Agent.

Judge: Timothy S. Stanton

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FINAL COMPENSATION ORDER

THIS CAUSE came on for a Final Hearing before the undersigned Judge of Compensation Claims (JCC) on February 11, 2025. Vincent Leuzzi, Esquire, appeared for Claimant. Deborah Eldridge, Esquire, appeared for the Employer/Carrier (E/C). The petition for benefits (PFB), e-filed on June 24, 2024, was the subject of this Final Hearing. The appendix lists all live witnesses, exhibits, documents, and objections. The Final Hearing was held by Zoom.

Claims

1. Authorization of medical care and treatment with a cardiologist or appropriate physician to treat Claimant's disabling arterial or cardiovascular hypertension.
2. Compensability of Claimant's disabling arterial or cardiovascular hypertension under section 112.18(1), Florida Statutes.
3. Attorney fees and costs.

Defenses

1. The E/C has authorized Dr. Howard Tee to evaluate and treat Claimant if

appropriate. The E/C is paying and investigating under the 120-day rule. The appointment with Dr. Howard Tee was scheduled and held on August 19, 2024.

2. The E/C is paying and investigating the compensability under the 120-day rule. The E/C reserves right to deny compensability within the 120-day window.

3. Attorney fees are not due or owing. The E/C will pay reasonable taxable costs, if any, related to the filing this PFB if benefits are obtained as a result of the PFB, upon receipt of documentation of same and subject to the approval of the JCC.

Stipulations:

1. Claimant's pre-employment physical did not have any evidence of hypertension.
2. Claimant was a member of the protected class.

Findings of Fact and Conclusions of Law

In making my findings of fact and conclusions of law, I have considered and weighed the evidence presented to me. I have observed and assessed the candor and demeanor of the witnesses who testified in person before me, and I have resolved the conflicts in the testimony. I have not written a detailed summary of all the facts and evidence presented. *See* § 440.25(4)(e), Fla. Stat.; *Garcia v. Fence Masters, Inc.*, 16 So. 3d 200 (Fla. 1st DCA 2009) (holding that a compensation order need only contain findings of the ultimate material facts necessary to support the award, rather than a recitation of all evidence presented). Although I may not reference or detail each item of evidence presented by the parties, I have carefully considered all the evidence and exhibits in the context of the arguments of counsel and the appropriate statutory authority and case law in making these findings of fact and conclusions of law:

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

2. Any and all issues raised through the PFBs that are the subject matter of the Final Hearing, unless jurisdiction is expressly reserved, which were not tried at the hearing or dismissed at trial, are presumed resolved; or, in the alternative, deemed abandoned by Claimant and are therefore denied and dismissed with prejudice, unless jurisdiction was reserved for later determination of specific issues. *See Scotty's Hardware v. Northcutt*, 883 So. 2d 859 (Fla.1st DCA 2004); *Betancourt v. Sears Roebuck & Co.*, 693 So. 2d 680 (Fla. 1st DCA 1997).

3. The evidence closed on February 11, 2025, following which the parties made closing argument.

4. The stipulations of the parties in the Uniform Pretrial Stipulation filed on November 6, 2024, are accepted and adopted.

5. Claimant testified that he was hired by the employer in 2004 as a police officer. He testified that he was the Deputy Chief of Police on the day of the incident. He testified that his job duties included overseeing operations, investigations, administrative duties, and assisting the police chief.

6. He testified that on February 17, 2024, around 8:00 p.m., he was at home when he began experiencing extreme pressure in his chest and his head was pounding. He testified that he took blood pressure medication and went to bed.

7. Claimant testified that he fell asleep, and about 2:30 a.m., he awoke unable to breathe, he thought his chest would explode, his head was pounding, his eyes felt like they would explode from his head, and he thought he would die. He testified that he took his blood pressure at home and it was high. He testified that he went to the emergency room (E/R).

8. He testified that his blood pressure was taken at the E/R and it was 199/103. At that time, he was admitted into the hospital as he understood that he was having a medical

emergency. He testified that he underwent some cardiac tests, and he was given high blood pressure medication. After about twelve to fourteen hours, his blood pressure was under control, and he was discharged from the hospital.

9. Claimant testified that he was advised to follow up with a doctor. He testified that he subsequently treated with Dr. Grecul, who had initially treated him at the E/R. He testified that Dr. Grecul told him that he thought Claimant had a panic attack on February 17, 2024.

10. Claimant testified that the E/C sent him to Dr. Tee for an assessment. He only saw Dr. Tee one time.

11. Claimant testified that he now treats at the Veteran's Hospital for hypertension. He is prescribed high blood pressure medication.

12. Claimant testified that he was initially diagnosed with hypertension in 2021. He treated with Dr. Garcia, and he was prescribed high blood pressure medication. He continued to treat with Dr. Garcia until February 17, 2024.

13. Dr. Tee, a cardiologist, testified that he examined Claimant on August 19, 2024. He testified that Claimant's blood pressure was 124/86, his heart rate was 71, and he weighed 258 pounds. He testified that Claimant's blood pressure was relatively normal. He testified that Claimant had no significant murmurs and his peripheral pulses were two plus. He testified that he did not find any abnormalities in his examination of Claimant.

14. Dr. Tee testified that he diagnosed Claimant with essential hypertension, diabetes, atypical non-cardiac chest pain, and anxiety.

15. Dr. Tee testified that there are no known causes of essential hypertension.

16. He testified that he understood Claimant had been diagnosed with hypertension several years prior to his examination. He testified that Claimant had been on high blood

pressure medication since the prior diagnosis.

17. Dr. Tee testified that Claimant reportedly had chest pain, symptoms of a headache, and a shortness of breath before going to the hospital on February 17, 2024.

18. Dr. Tee testified that Claimant's blood pressure was 199/103 when he arrived at the hospital on February 17, 2024. He testified that Claimant could not perform his police duties when he was at the hospital due to his high blood pressure of 199/103.

19. Dr. Tee testified that Claimant's stress and anxiety was the cause of his need for the hospital treatment on February 17, 2024. He testified that Claimant's high blood pressure at the hospital resulted from "white coat hypertension," which is caused by stress and anxiety. He testified that Claimant informed him that he had been under stress and anxiety. However, Dr. Tee testified that he did not know the cause of Claimant's stress and anxiety.

20. He testified that white coat hypertension is a different diagnosis from essential hypertension, and it does not require any medication as the high blood pressure will return to normal on its own.

21. Dr. Tee first testified that Claimant did not receive any medication for his hypertension while at the hospital. However, he later agreed that Claimant was given Lisinopril while he was at the hospital. He testified that Lisinopril is prescribed for high blood pressure.

22. Dr. Tee placed Claimant at maximum medical improvement at the time of his visit. He assigned Claimant a seven-percent permanent impairment rating for his hypertension, and he released Claimant to full duty work.

23. Dr. Borzak, a cardiologist, testified that he diagnosed Claimant with essential hypertension for the February 17, 2024, incident. He testified that there is no known cause of

essential hypertension. He also testified that Claimant's essential hypertension is a disease of the cardiovascular system.

24. Dr. Borzak testified that Claimant's essential hypertension was relatively controlled before the February 17, 2024, incident. He testified that Claimant was taking Lisinopril for his high blood pressure before the hospitalization.

25. Dr. Borzak testified that Claimant suffered an impairment of his health on February 17, 2024, due to his essential hypertension. He testified that Claimant had markedly elevated blood pressure and symptoms of chest pain. He testified that Claimant's blood pressure was 199/103 at the hospital.

26. He testified that Claimant was disabled from performing his police officer duties due to his high blood pressure of 199/103 while he was at the hospital.

27. Dr. Borzak testified that Claimant's symptoms of chest pain and headaches before the hospitalization could be symptoms of his essential hypertension.

28. He testified that Claimant's February 17, 2024, disability related to his essential hypertension. Dr. Borzak testified that while pain can cause a spike in high blood pressure, he did not know the cause of Claimant's essential hypertension.

29. He testified that Claimant will need future visits with a cardiologist or primary care physician, medication, and periodic laboratory tests for his essential hypertension.

30. Dr. Borzak did not place Claimant at MMI.

31. I have reviewed the medical records of Dr. Garcia, Palm Bay Hospital, and Bayside Recovery & Wellness Center. I decline to recite all those medical records here. However, I will discuss below any of the records that I find relevant to my findings of fact or decisions.

Presumption and Compensability

32. The E/C denied the compensability of Claimant's essential hypertension.

33. Claimant argued that his essential hypertension is a compensable injury under section 112.18. Under section 112.18, Claimant's essential hypertension is presumed compensable if he meets the four following factors:

- a. He is a member of the protected class (firefighters, law enforcement officers, and correctional officers);
- b. He suffers from a protected condition (hypertension, heart disease, or tuberculosis);
- c. He underwent and passed a pre-employment physical without any evidence of the condition claimed; and,
- d. His condition resulted in a partial or total disability.

34. The E/C stipulated that Claimant is a member of the protected class as a police officer, and he successfully passed a pre-employment physical without any evidence of hypertension. Therefore, to determine whether Claimant is entitled to the presumption under section 112.18, I will examine whether his condition is a protected condition and whether he suffered a partial or total disability as a result of that condition.

35. Concerning whether Claimant suffers from a protected condition, both Dr. Tee and Dr. Borzak diagnosed Claimant with essential hypertension.

36. Furthermore, Dr. Borzak testified, and I so find that Claimant's essential hypertension is a disease of the cardiovascular system. Therefore, I find that Claimant's essential hypertension (cardiovascular hypertension) is a covered condition under section 112.18.

37. This holding is supported in *Williams v. City of Orlando*, 89 So. 3d 302 (Fla. 1st DCA 2012). In *Williams*, the claimant was diagnosed with essential hypertension. The JCC

found that the essential hypertension was not a covered hypertension condition as it was not arterial or cardiovascular. However, evidence was presented that the claimant's "essential" hypertension also included "arterial" hypertension. As held in *Williams*, "*Bivens* [*Bivens v. City of Lakeland*, 993 So. 2d 1100 (1st DCA 2008)] does not hold that, as a matter of law, 'essential' hypertension is not covered by section 112.18. To the contrary, *Bivens*, which also involved a claimant diagnosed with 'essential' hypertension, was decided on the ground there was simply 'no record evidence that the JCC could rely on'-an absence of evidence-to support a finding that the hypertension was arterial or cardiovascular." *Id.* at 303.

38. Here, as discussed above, I find that Claimant has provided sufficient evidence that his essential hypertension includes cardiovascular hypertension.

39. I next turn to whether Claimant suffered a partial or total disability from the event on February 17, 2024.

40. Disability occurs when an employee is incapacitated from performing his work. *Bivens v. City of Lakeland*, 993 So. 2d 1100, 1103 (Fla. 1st DCA 2008) ("Effective date of disablement . . . occurred when the claimant was 'precluded from working because of his disease.'"). A claimant does not need to suffer actual wage loss. *Id.* ("A finding of disability 'hinges on the employee's ability to earn income, not . . . whether the employee has experienced wage-loss.'").

41. Dr. Borzak testified, and I so find, that Claimant could not perform his police duties as a result of his essential hypertension while he was at the hospital on February 17, 2024. Accordingly, I find that Claimant was disabled from his police duties on February 17, 2024.

42. I reject Dr. Tee's opinion that Claimant's disability was caused by white coat hypertension and not essential hypertension, as I find that his opinions are unreliable. I will

discuss my reason for rejecting Dr. Tee's opinions as unreliable in the rebuttal below of the presumption discussion and findings.

43. As Claimant is a member of the protected class (police officer), has a covered condition (essential/cardiovascular hypertension), had a pre-employment physical with no evidence of hypertension, and suffered a disability as a result of the covered condition, I find that he is entitled to the presumption under section 112.18 that his essential hypertension is a compensable work injury.

44. I next look to see whether the E/C presented sufficient evidence to rebut the presumption. As Claimant relied on the presumption, I find that the E/C is held to the standard of a preponderance of the evidence. *Punsky v. Clay Cnty. Sheriff's Off.*, 18 So. 3d 577 (Fla. 1st DCA 2009).

45. The E/C argued that Claimant's unrelated stress and anxiety caused his disability on February 17, 2024. I reject this argument as I find that the E/C failed to provide sufficient evidence to meet its burden of preponderance of the evidence. I find that while Dr. Tee testified that Claimant's disability was caused by stress and anxiety, he also testified that "I'm not sure what's the cause of the stress or anxiety" He could not testify if the cause of the stress and anxiety related to Claimant's police duties or some other unrelated causes.

46. Furthermore, I reject Dr. Tee's opinion that Claimant suffered from white coat hypertension on February 17, 2024, as I find that his opinions are unreliable. Dr. Tee's conflicting deposition testimony on a material fact supports that his opinions are unreliable:

Redirect:

Q. Okay, you were asked about whether he's on medication in the hospital. It looks like their discharge summary mentioned a couple of medications, but it didn't appear to me to be

anything related to hypertension; is that consistent with your review of the records?

A. That's right, that's right.

Q. So while he may have been given medication in the hospital, it wasn't for hypertension?

A. Correct.

However, on recross:

Q. So these are the hospital records from February 17th, 2024. While in the hospital, was Mr. Fisher given Lisinopril?

A. Yes.

Q. And Lisinopril is a medication for hypertension, right?

A. Yeah, his usual dose.

Q. But he was given that medication in the hospital?

A. Yes.

47. I find that Claimant was given Lisinopril while he was in the hospital on February 17, 2024. Palm Bay Hospital medical record, page 25 of Joint Exhibit 2.

48. Therefore, based on the above, I find that the E/C failed to rebut the presumption of compensability of Claimant's essential hypertension. Accordingly, I find that Claimant's essential hypertension is a compensable work injury.

WHEREFORE, it is ORDERED AND ADJUDGED:

1. The claim for authorization of medical care and treatment with a cardiologist or appropriate physician to treat Claimant's disabling arterial or cardiovascular hypertension is **GRANTED**. The E/C shall authorize a cardiologist or appropriate physician to treat Claimant's essential (cardiovascular) hypertension.

2. The claim for compensability of the disabling arterial or cardiovascular hypertension under section 112.18(1) is **GRANTED**. Claimant's essential (cardiovascular) hypertension is a compensable work injury.

3. The claim for attorney fees and costs is **GRANTED**. Jurisdiction is reserved to determine the amount of the attorney fees and costs, if the parties cannot agree.

DONE AND SERVED this 28th day of February, 2025, in Altamonte Springs, Seminole County, Florida.



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APPENDIX

Judge's Exhibits:

1. PFB, filed on June 24, 2024. (DN 1).
2. Response to PFB, filed on July 16, 2024. (DN 4).
3. Pretrial stipulation, filed on November 6, 2024. (DN 18).
4. The E/C's amended pretrial stipulation, filed on January 13, 2025. (DN 36).
5. Claimant's trial memorandum, filed on February 7, 2025. (DN 46).
6. The E/C's trial memorandum, filed on February 7, 2025. (DN 48).
7. Order granting the motion for continuance of the Final Hearing, entered on January 9, 2025. (DN 35).

Joint Exhibits:

1. Dr. Garcia's medical records, filed on December 13, 2024. (DN 20-27).
2. Palm Bay Hospital records, filed on January 13, 2025. (DN 37-39).

Claimant's Exhibits:

1. Dr. Borzak's deposition, with attachments, filed on February 7, 2025. (DN 45).

E/C's Exhibits:

1. Bayside Recovery & Wellness Center medical records, filed on December 17, 2024. (DN 28).
2. Dr. Tee's deposition, filed on February 6, 2025. (DN 41).

Live witnesses:

1. Claimant.