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

Jonathan Gilley,
Employee/Claimant,

vs.

City of Winter Haven/Florida Municipal Insurance Trust,
Employer/Carrier/Servicing Agent.
_____/

OJCC Case No.: 24-016544MAM

Accident date: 05/22/2023

Judge: Mark A. Massey

COMPENSATION ORDER

This matter came before the undersigned Judge of Compensation Claims for a final hearing on 02/25/25. Present and representing claimant were Paolo Longo, Esquire and Vincent Leuzzi, Esquire. Present and representing E/C was Frank Wesighan, Esquire. Claimant Jonathan Gilley and employer representative Shawn Dykes were also present, and both testified live. The hearing was held live in the Tampa District OJCC Office. The subject of the hearing was the petition for benefits filed 07/08/24. Jurisdiction was reserved on the petition filed 12/20/24 because it has not yet been mediated and is therefore not ripe for adjudication.

Claims

1. Compensability of disabling arterial and cardiovascular hypertension and/or heart disease [atrial fibrillation/A-Fib] pursuant to section 112.18(1), Florida Statutes and collective bargaining agreement.
2. Authorization of medical care and treatment with a board certified cardiologist appropriate physician for arterial and cardiovascular hypertension and/or heart disease.
3. Costs and attorney's fees.

(The claims for TTD and TPD were withdrawn)

Defenses

1. Failure to timely report alleged injury/condition.
2. A-Fib condition accepted compensable for prior dates of accident 06/04/20 and 06/23/21.
3. Statute of limitations has run on compensable A-Fib condition.

4. May 2023 treatment for prior compensable condition.
5. No authorized medical evidence of disability.
6. Claimant treated with unauthorized physician—despite having authorized physicians.
7. No costs or attorney's fees owed.

Judge's Exhibits

1. Petition for benefits filed 07/08/24 (D-1)
2. Pre-trial stipulation filed 11/13/24 (D-14)
3. Claimant's Trial Summary, for argument only (D-55)
4. E/C's Trial Summary, for argument only (D-31)

Claimant's Exhibits

1. Deposition of Dr. Borzak taken 12/19/24 with exhibits (D-23-24)

Employer/Carrier's Exhibits

1. Response to petition (D-33)
2. Notice of Denial (D-34)
3. Time records of City of Winter Haven (D-35)
4. Payout sheets for 06/04/20 date of accident (D-36)
5. Payout sheets for 06/23/21 date of accident (D-37)
6. Medical records of Dr. Bolanos (D-38)
7. Additional medical records of Dr. Bolanos (D-39)
8. Medical records of Dr. Tai (D-40)
9. Medical records of Watson Clinic (D-41)
10. Additional medical records of Watson Clinic (D-42)
11. Medical records of Winter Haven Hospital (D-43)
12. Medical records of Lakeland Medical Center for 06/04/20 date of accident (D-47)
13. Medical records of Lakeland Medical Center for 06/23/21 date of accident (D-48)
14. Deposition of claimant taken 08/28/24 (D-49)
15. Deposition of Shawn Dykes taken 12/10/24 with exhibits (D-50)
16. Deposition of Karen Todd taken 12/10/24 with exhibits (D-51)
17. Deposition of Dr. Parikh taken 01/23/25 with exhibits (D-52)

Findings of Fact

Claimant has been employed as a firefighter with the City of Winter Haven since April 2003. On 06/04/20, claimant presented to Lakeland Regional Medical Center with a complaint of heart palpitations. He was diagnosed with atrial fibrillation ("A-Fib"). The A-Fib was accepted as compensable under a 06/04/20 date of accident and treatment was authorized with Dr. Nocero. On 12/16/20, Dr. Nocero placed claimant at MMI with no permanent impairment. Claimant did not thereafter follow up with Dr. Nocero. Instead, claimant sought treatment outside of workers' compensation with Dr. Tai and Dr. Bolanos.

On 06/23/21, claimant again presented to Lakeland Regional Medical Center with a complaint of heart palpitations, and was again diagnosed with A-Fib. The A-Fib was accepted as compensable under a 06/23/21 date of accident, and treatment was again authorized with Dr. Nocero. On 10/14/21, Dr. Nocero placed claimant at MMI with no permanent impairment. Claimant did not thereafter follow up with Dr. Nocero, electing again to obtain treatment outside of workers' compensation with Dr. Tai and Dr. Bolanos.

There is no dispute that the statute of limitations has run on the 06/04/20 and 06/23/21 dates of accident.

Claimant continued treating with Dr. Tai and Dr. Bolanos through 2021, 2022, and 2023. He continued to have episodes of A-Fib. He was placed on Flecainide among other conservative measures. In May 2022 and August 2022, the possibility of an ablation procedure was discussed. On 04/05/23, Dr. Bolanos recommended that claimant proceed with the ablation procedure. Claimant agreed, and the procedure was scheduled to take place, and did take place, on 05/22/23.

During the ablation procedure, claimant was in the hospital for about seven hours. While recovering, he missed at least one shift, and received sick pay from 05/22/23 through 05/26/23.

Because claimant's treatment with Dr. Tai and Dr. Bolanos, including the ablation procedure, was done outside of workers' compensation, it was covered under claimant's Blue Cross/Blue Shield health insurance. Following the ablation procedure, claimant began getting bills from the hospital. On 07/03/23, claimant spoke with Shawn Dykes, Human Resources Director for the City of Winter Haven, and informed her of having had the ablation procedure, and asked about it being covered under workers' compensation. Ms. Dykes sent an e-mail to the workers' compensation adjuster, but was apparently advised that the statute of limitations had run on the A-Fib claims.

Analysis and Conclusions of Law

Claimant seeks compensability of his A-Fib condition under a date of accident of 05/22/23 (the date the ablation procedure was performed). E/C maintain that claimant's current A-Fib condition is merely a continuation or progression of the same condition he had in 2020 and 2021, and there was no new "accident" or occurrence on 05/22/23. Further, E/C argue claimant failed to provide timely notice to the employer of the alleged 05/22/23 date of accident claim.

Dr. Borzak, claimant's IME physician, and Dr. Parikh, E/C's IME physician, both testified that claimant's current A-Fib condition is a natural continuation or progression, or worsening, of the same A-Fib condition from which claimant suffered under dates of accident 06/04/20 and 06/23/21, and which was accepted as compensable under those dates of accident. However, case law instructs us that in occupational disease claims, a new date of accident may be found if the progression of the underlying compensable condition results in a subsequent period of disability. *Orange County Fire Rescue v Jones*, 959 So. 2d 785 (Fla. 1st DCA 2007); *Smith v City of Daytona Beach Police Dept.*,143 So. 3d 436 (Fla. 1st DCA 2014). Therefore, I find claimant is not precluded from asserting a new date of accident for his A-Fib condition, if he can prove the progression or worsening of the condition on 05/22/23 resulted in a disability, which is one of the required elements for application of the presumption afforded in section 112.18(1), Florida Statutes (2023).

For purposes of the presumption, there is no dispute that claimant is a member of the covered class (firefighter), or that claimant suffers from a covered condition (A-Fib, which is a form of heart disease), or that claimant underwent a pre-employment physical which did not reveal any evidence of the claimed covered condition. There is a dispute, however, as to whether the condition resulted in a new period of disability.

The ablation procedure on 05/22/23 was a pre-scheduled, elective procedure. There was no new or specific event, occurrence or episode that day which led to the procedure. However, I find that is not determinative. What is determinative is that the procedure was the result of progression or worsening of the A-Fib condition which had been accepted as compensable under the earlier dates of accident. The question, therefore, is not whether there was a new event or occurrence, but whether there was a new period of disability.

The evidence in this case is that claimant was in the hospital for about seven hours and under general anesthesia. While recovering, he missed at least one shift and he received approved sick pay from 05/22/23 through 05/26/23.

Dr. Borzak testified that claimant "was disabled because he was under general anesthesia and undergoing an ablation procedure that required hospital care." (Deposition of Dr. Borzak, p. 13). He further testified that claimant was disabled due to heart disease on 05/22/23. (Id., p. 18). When asked if it was reasonable and medically necessary for claimant to take a shift off to recover from the procedure, Dr. Borzak stated: "Yes, I probably would've left him off a little bit longer than that, but yes." (Id., p, 19)

Dr. Parikh testified that claimant suffered from an impairment of health due to heart disease on 05/22/23, and that in his experience a firefighter who undergoes an ablation should be out of work for up to two weeks. (Deposition of Dr. Parikh, p. 28-29, 32)

For post-2003 dates of accident, disablement may be proven by evidence that because of the injury, the claimant has experienced incapacity to earn in the same or any other employment the wages which the claimant was receiving at the time of injury. The period of incapacity must result from treatment for a qualifying condition and not testing for purely diagnostic purposes. Work restrictions must be imposed because of the injury and such restriction(s) themselves must create the incapacity to earn. A period of off-work status or restricted duty resulting from a medical procedure may satisfy disability if such procedure constitutes, even in part, treatment for a previously diagnosed qualifying condition. *Friesen v Highway Patrol*, 364 So. 3d 1051 (Fla. 1st DCA 2023) (internal citations omitted)

In *City of Jacksonville Fire and Rescue Department v Battle,* 148 So. 3d 795 (Fla. 1st DCA 2014), the claimant underwent a cardiac catheterization to diagnose and potentially treat coronary artery disease. He was taken off work for three days following the catheterization in order to recover. The JCC found, and the appeal court agreed, that claimant had satisfied the disability requirement of the presumption because he was unable to work while undergoing the catheterization, and was medically restricted from working for a short period following the catheterization.

In the instant case, I find claimant has satisfied the disability requirement of the presumption because he was unable to work during the seven hours he was in the hospital, and for at least one shift following his release from the hospital, due to medically imposed restrictions. As noted in *Battle*, recovery time from invasive treatment and testing qualifies as disability.

I find this case is distinguishable from the cases where a claimant goes to a hospital or doctor's office for testing, or even treatment, but no restrictions are imposed. See, e.g., *Friesen*,

supra ("[A]t no time was Friesen incapacitated because of the hypertension from earning his wages . . . Dr. Gupta did not assign medically necessary restrictions during or after the appointment."); *Bivens v City of Lakeland*, 993 So. 2d 1100 (Fla. 1st DCA 2008 ("No work restrictions were ever placed on claimant when he was being evaluated or diagnosed with MVA."); *Jacksonville Sheriff's Office v Shacklett*, 15 So. 3d 859 (Fla. 1st DCA 2009) ("Nothing in the record establishes claimant was in any way incapacitated as a result of his hypertension.") The relevant factor in those cases was that no medical restrictions of any kind were imposed at any time during the course of their treatment.

In contrast, the claimant here was medically restricted from working not only during the ablation procedure, but for a short time thereafter as well. Therefore, disability has been established. *Rocha v City of Tampa* 100 So. 3d 138 (Fla. 1st DCA 2012) (disability occurs when the employee becomes actually incapacitated, partially or totally, from performing his employment); *City of Mary Esther v McArtor*, 902 So. 2d 942 (Fla. 1st DCA 2005) (determination of disability turns upon the person's capacity to earn income, not upon the employer's decision to pay the injured person's salary while he or she is incapacitated). As noted, while claimant was undergoing the ablation procedure, and for at least one shift following the procedure, claimant was incapacitated from working due to medically imposed restrictions.

Turning to the issue of notice, I find claimant did ask for sick time from 05/22/23 through 05/26/23, and the sick time was approved and paid. However, claimant did not advise the employer at that time of the reason for the request. Specifically, he did not advise the employer that he was undergoing a procedure related to his A-Fib condition which had previously been accepted as compensable, nor did he provide any other information at that time which would reasonably lead the employer to believe the time off might be work-related. I reject any testimony to the contrary.

I find, however, that claimant did speak to the Human Resources Director on 07/03/23 and did advise her of the procedure which he had undergone, and that it was related to A-Fib. He specifically inquired as to whether it would be covered under workers' compensation. To her credit, the Human Resources Director did immediately contact the workers' compensation adjuster to advise of claimant's inquiry. I conclude that as of 07/03/23, the employer and the carrier were both on notice of the treatment and of its potential compensable nature, including the potential of it falling under a new date of accident. I further conclude that because 07/03/23 is 42 days from 05/22/23, it is within the 90-day reporting time for occupational disease claims. See section

440.151(6), Florida Statutes (2023) ("The time for notice of injury or death provided in section 440.185(1) shall be extended in cases of occupational diseases to a period of 90 days.")

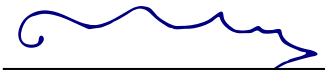
I conclude claimant's A-Fib condition is compensable under date of accident 05/22/23.

Finally, I find it is reasonable and medically necessary for claimant to receive treatment by a board certified cardiologist or other appropriate physician, for his compensable A-Fib condition. This is supported by the testimony of Dr. Borzak and Dr. Parikh.

WHEREFORE it is hereby ORDERED AND ADJUDGED:

1. The claim for compensability of disabling heart disease (A-Fib) is granted.
2. The claim for authorization of medical care and treatment with a board certified cardiologist [or other] appropriate physician is granted.
3. The claim for E/C-paid costs and attorney's fees is granted. Jurisdiction is reserved as to amount if the parties cannot agree.

DONE AND SERVED this 11th day of March, 2025, in Tampa, Hillsborough County, Florida.



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