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

Kim Ivy,
Employee/Claimant,

vs.

City of Miami Police Department/USIS,
Employer/Carrier/Servicing Agent.
_____/

OJCC Case No.: 25-001874SMS

Accident date: 06/17/2023

Judge: Sylvia Medina-Shore

COMPENSATION ORDER

THIS CAUSE came before the undersigned Judge of Compensation Claims (JCC) for a Merits Hearing on 6/26/2025, regarding the Petition for Benefits (PFB) filed 1/23/2025. Claimant was represented by Kristine Callagy, Esquire, and Employer/Carrier (E/C) was represented by David M. Goehl, Esquire. This Order ensues.

INTRODUCTION:

In 2008, Claimant was hired by the City of Miami Police Department ("City") as a full-time certified law enforcement officer. On 6/17/2023, while at home, Claimant felt pain in his right leg radiating to his chest area and feared having a blood clot. He sought emergency care at Memorial Hospital where his blood pressure was 184/117. Claimant stayed overnight at the hospital and was discharged the next day with a diagnosis of hypertension.

E/C accepted the claim as compensable under the 120-day provision of Section 440.20(4), Florida Statutes, and authorized medical treatment with cardiologist, Dr. Antonio Rosado. After undergoing several tests and medication treatment for the hypertension, Dr. Rosado stated Claimant's hypertension was caused by his non-occupational conditions of morbid obesity and severe sleep apnea. E/C has denied compensability of this claim.

The parties agree that Claimant satisfies the presumption in the "Heart/Lung Bill" of Section 112.18(1), Florida Statutes. That said, E/C argues that they have rebutted the presumption with competent evidence. In contrast, Claimant argues that E/C needs to rebut the presumption here by clear and convincing evidence, as they have presented the testimony of Dr. Steven Borzak in support of their position. Claimant further contends that Dr. Rosado's opinions

are inadmissible as they do not satisfy Section 90.702, Florida Statutes, and should be stricken. If Dr. Rosado's opinions are admissible, Claimant submits that they do not rise to the level of clear and convincing evidence to successfully rebut the presumption.

CLAIMS:

1. Compensability of Claimant's hypertension per Section 112.18(1), Florida Statutes;
2. Authorization of a cardiologist for treatment of the hypertension;
3. Payment of Impairment Income Benefits (IIBs) based on 11% rating assigned by Dr. Borzak;
4. Penalties, Interest, Attorney's Fees and Costs (PICA).
5. Claimant dismissed claims for temporary total and temporary partial disability benefits at the final hearing.

DEFENSES:

1. E/C at first accepted compensability of Claimant's hypertension under the 120-day provision of Section 440.20(4) and authorized medical treatment with Memorial Hospital, Dr. Alexandre Abreu, Dr. Chelsea Gordner, and Dr. Rosado. After numerous tests were completed, Dr. Rosado testified that Claimant's hypertension was unrelated nor triggered by his employment, but by non-occupational conditions. E/C denied the entire claim on 10/13/2023;
2. Claim for treatment with a cardiologist of the hypertension is denied for the above reason;
3. Claim for IIBs based on 11% permanent impairment rating (PIR) is denied for the above reason;
4. PICA is not due or owing.

CLAIMANT'S AVOIDANCES:

1. There is no medical evidence supporting E/C's position that Claimant's hypertension relates to non-occupational conditions; major contributing cause is inapplicable to Claimant's claim under Section 112.18(1), and Dr. Rosado's opinions do not meet the requirements of Section 90.702 and *Daubert v. Merrell Dow Pharmaceuticals., Inc.,* 509 U.S. 579 (1993).

EXHIBITS:

JCC:

1. Uniform Pretrial Stipulation, filed 5/9/2025 (DE#13).

CLAIMANT:

1. Motion in limine, filed 6/16/2025 (DE#16).
2. Deposition of Dr. Steven Borzak with exhibits, filed 6/24/2025 (DE#40-49). E/C's objection to Dr. Perloff's opinions is sustained as he is not an authorized physician, independent medical advisor (IME), or an expert medical advisor here.
3. Pre-employment physical, filed 6/24/2025 (DE#50).
4. Payout, filed 6/24/2025 (DE#51).
5. Wage statement, filed 6/24/2025 (DE#56).
6. Trial memorandum for I.D. purposes, filed 6/24/2025 (DE#53).

E/C:

1. E/C's Trial Memorandum for I.D. purposes, filed 6/24/2025 (DE#54).
2. Deposition of Dr. Antonio Rosado with exhibits, filed 6/23/2025 (DE#23-39). Claimant's objections are overruled as explained below.

FINAL HEARING TESTIMONY:

1. Kim Ivy, Claimant.
2. E/C – None.

STIPULATIONS:

1. Claimant's average weekly wage (AWW) is $2,063.66 as of 6/24/2025 (not including fridge benefits) and compensation rate (C/R) is $1,197.00.
2. E/C stipulates that Claimant meets the presumption under Section 112.18(1).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

Claimant's Testimony-

1. Claimant appeared via zoom at the final hearing. After passing a pre-employment physical, the City hired Claimant as a police officer in September 2008. His work duties are to patrol the streets and maintain public order. He works the "C" shift, from 9:00 p.m. to 7:00 a.m. and sleeps during the day.
2. Sometime in June 2023, while at home, Claimant had a headache and felt right leg pain radiating to his right arm. Claimant testified to feeling ill while at work the night before but worked the entire shift. Claimant's wife took him to the emergency room at Memorial

Hospital where they noted elevated blood pressure. Claimant was treated with intravenous medications during his overnight stay. When discharged, Claimant was to follow up with a cardiologist and was placed on a no-work status.

3. The employer authorized Dr. Rosado who treated him for hypertension and ordered several tests. The hormonal level tests yielded normal results, but the sleep study test confirmed severe sleep apnea. Claimant uses a CPAP machine for his sleep apnea. Dr. Rosado kept Claimant off work for a couple of weeks and he received workers' compensation benefits. Claimant returned to full-duty work in August 2023. Presently, Claimant is receiving unauthorized care with Dr. Perloff and his blood pressure is under control with medication.
4. Claimant was never diagnosed with high blood pressure before June 2023. Other than having a blood clot in his leg from COVID in 2021, Claimant testified he was in good health before June 2023. He underwent and passed yearly physical examinations for his police job.
5. On cross-examination, Claimant testified he presently weighs 273 pounds, gaining 40 pounds since he was hired by the City. He could not recall whether any doctor recommended he lose weight before June 2023. Despite his lack of recollection, Claimant testified that before June 2023, he was trying to exercise and eat healthy.
6. Claimant also testified that he thought his symptoms in June 2023 may be due to a blood clot. Claimant had previously had a blood clot for which he took medication for about six months. Also, Claimant's friend, a police officer, had recently died of a blood clot. Claimant denied having a specific incident at work triggering his symptoms in June 2023. He did not recall telling the hospital doctors of having elevated blood pressure before June 2023 either. Claimant however does not dispute the history he provided to the hospital doctors. He did recall telling the doctors of his pronounced snoring. Having considered Claimant's testimony and demeanor, I find him to be sincere.

CLAIMANT'S MOTION IN LIMINE AND TO STRIKE DR. ROSADO'S TESTIMONY:

7. In 2013, the Florida Legislature modified Section 90.702 to adopt the standards for expert testimony in the Florida courts as provided in *Daubert v. Merrell Dow Pharmaceuticals, Inc*., L.Ed.2d n469 (1993), and to no longer apply the standard in *Frye v. United States,* 293 F.1013 (D.C. Cir. 1923).

8. The First District Court of Appeals ruled that the *Daubert* standard applies to the opinions of experts in workers' compensation cases. *Giaimo v. Florida Autosport, Inc*., 154 So. 3d 385, 357-88 (Fla. 1st DCA 2014).
9. As amended, Section 90.702 now provides:

> "If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:
>
> (1) The testimony is based upon sufficient facts or data;
> (2) The testimony is the product of reliable principles and methods; and
> (3) The witness has applied the principles and methods reliably to the facts of the case." *Booker* at 191-192.

10. In applying the *Daubert* principles, the Eleventh Circuit established a three-part test to determine whether expert testimony should be admitted under *Daubert,* explaining that the party seeking to introduce the expert witness bears the burden of proving all three of these elements: (1) the expert must be qualified to testify competently regarding the matter he or she intends to address; (2) the methodology by which the expert reaches conclusions must be reliable as determined by the *Daubert* inquiry; and (3) the testimony must assist the trier of fact through the application of expertise to understand the evidence or determine a fact in issue. *Kilpatrick v. Breg, Inc.,* 613 F.3d 1329, 1335 (11th Cir. 2010).
11. Qualifications of Dr. Rosado: Claimant stipulates to Dr. Rosado's qualifications as a cardiologist. Dr. Rosado testified he has more than 20 years' experience in treating patients with hypertension and cardiovascular diseases. I find Dr. Rosado is qualified to render opinions about Claimant's hypertension.
12. Testimony is the Product of Reliable Principles and Methods: Claimant attended office visits with Dr. Rosado on 7/18/2023, 8/3/2023, 8/10/2023, 8/17/2023, 9/22/2023, and 10/6/2023. Claimant telephoned Dr. Rosado on 8/4/2023, 8/7/2023, and 8/23/2023. On the initial office visit, Claimant told Dr. Rosado that on 6/16/2023, he had a headache at work. He usually got a headache when he was hungry. He finished his shift and went home. At 4:00 a.m. on Saturday morning, he developed pain in his right leg, pain in his right arm and his chest area. He went to the hospital because he was concerned about

having a blood clot, which he had had in his leg. He was evaluated at the hospital, noted to have high blood pressure and was referred to a cardiologist.

13. Claimant is 5'8" tall. At the initial visit with Dr. Rosado, Claimant had a blood pressure of 168/107, weight of 270 pounds, and body mass index of 41 kilograms per meter square. Claimant's cardiac and lung examinations were unremarkable. Dr. Rosado notated Claimant was severely obese and had high blood pressure. He also suspected Claimant suffered from sleep apnea. Dr. Rosado specified that Claimant's hypertension was directly related to his morbid obesity. He provided Claimant with a prescription for routine bloodwork, asked him to adjust his diet and lose weight, undergo a stress test, and follow up with his primary care physician about his bronchitis. Dr. Rosado adjusted Claimant's blood pressure medication.
14. Dr. Rosado specified that, he referred Claimant for a sleep study and an endocrinologist to rule out other causes for his hypertension. Dr. Gordner, an endocrinologist, ruled out hyperaldosteronism, an endocrine disorder, as well as abnormal cortisol levels. Dr. Abreu conducted the sleep study which confirmed Claimant had severe sleep apnea.
15. Dr. Rosado testified that Claimant's morbid obesity and severe sleep apnea are non-occupational conditions. After reviewing all the medical records and treating Claimant, Dr. Rosado testified these non-occupational conditions are the causes of Claimant's hypertension. He testified Claimant has "Secondary" hypertension, with morbid obesity and obstructive sleep apnea being the cause of the hypertension, unlike "Essential" hypertension, when there is no identifiable cause.
16. I find Dr. Rosado used reliable principles and methods in arriving at his causal relationship testimony. Dr. Rosado reviewed medical records from Memorial Hospital, the pre-employment physical exam of 9/4/2008, and series of occupational health physical examinations from Mt. Sinai. He referred Claimant to an endocrinologist and a sleep study to rule out other causes for the hypertension. While hyperaldosteronism was ruled out, the sleep test confirmed Claimant had severe sleep apnea and needed a CPAP machine. Based on all the facts and data elicited in the physical examinations, Dr. Rosado treated Claimant with a combination of medications and recommendations for weight loss. He testified that weight loss for obesity, treatment for severe sleep apnea, and medications are all common to treat hypertension and an accepted practice in cardiology.

Dr. Rosado testified that Claimant's severe obesity and obstructive sleep apnea are the direct cause and triggering event of his hypertension.

17. Dr. Rosado testified he reviewed pertinent medical literature regarding the causal link of hypertension, obesity, and sleep apnea. Dr. Rosado reviewed the 2017 American College of Cardiology and American Heart Association practice guidelines regarding the effects of obesity on hypertension, and the American Heart Association Scientific weight loss strategies for prevention and treatment of hypertension. Dr. Rosado also reviewed the 2021 American Heart Association in the Journal of Hypertension, a 2012 position paper from the Obesity Society and American Society of Hypertension, a 2019 article in the International Journal of Hypertension, a European Society position paper for management of patients with obstructive sleep apnea and hypertension, and an article in the 2015 Journal of Circulation Research pertaining to obesity induced hypertension.
18. Claimant objects to the medical literature and Dr. Rosado's testimony relying on the literature as impermissible bolstering and hearsay. The objections to the medical literature attached to Dr. Rosado's deposition are sustained. But the objections to Dr. Rosado's testimony are overruled.
19. Experts are prohibited from bolstering their opinions (on direct examination) by reference to the opinions of non-testifying experts or opinions expressed in treatises written by others. *Linn v. Fossum,* 946 so. 2d 1032, 1039 (Fla. 2006).
20. Here, though, E/C questioned Dr. Rosado regarding the basis of his causal relationship opinions to address Claimant's *Daubert* objections that no medical evidence supports Dr. Rosado's diagnosis of secondary hypertension and no literature or medical evidence to support the opinions that obesity and sleep apnea caused Claimant's hypertension. I find Dr. Rosado's testimony is being offered by the City to satisfy the requirements under Section 90.702 and is not bolstering.
21. <u>The Expert has Applied the Principles and Methods Reliably to the Facts of the Case</u>: Dr. Rosado testified that Claimant's obesity and elevated blood pressure readings caused his hypertension diagnosis in 2023 because "Claimant is much more obese now than when he was hired, even though he was very overweight when he was hired." (Pgs. 34 of Dr. Rosado's deposition). Dr. Rosado also testified that Claimant has been having issues with high blood pressure for many years before the accident. As part of his pre-employment

physical, Claimant underwent a treadmill stress test on 8/28/2008, which yielded a heart rate of 174, and blood pressure of 175/69. The study was interpreted as showing "borderline hypertensive" blood pressure and a clearance letter was required from Dr. Luis Anas. On 9/2/2008, Claimant's weight was 234 pounds, and his sitting blood pressure reading was 110/82. Claimant was felt to be overweight with elevated LDH and LDL cholesterol but was considered "qualified" and cleared by the doctor on 9/5/2008.

22. Claimant's weight afterward fluctuated from 240 pounds to 288 pounds. His blood pressure readings also fluctuated from 110/70 to 147/99. As of the 11/10/2022 yearly physical examination, Claimant weighed 288 pounds, gaining 48 pounds in 2 years and his blood pressure was 147/99. I find Dr. Rosado used reliable principles generally accepted in the medical community of cardiology and internal medicine in arriving at his causal relationship opinions. I conclude that his opinions are admissible and go to the weight of the evidence.

TESTIMONY OF DR. BORZAK, CLAIMANT'S INDEPENDENT MEDICAL EXAMINER:

23. On 1/15/2025, Dr. Borzak, a cardiologist, conducted a "paper" IME on behalf of the Claimant. He did not physically examine the Claimant. After reviewing all the medical records, Dr. Borzak diagnosed Claimant with essential hypertension which he explained the cause is unknown. Dr. Borzak testified that secondary hypertension is hypertension caused by something else, such as hyperaldosteronism and pheochromocytoma. Claimant had a thorough workup for other causes of hypertension but none were found.
24. Dr. Borzak testified that first responders have an increased prevalence of hypertension and it is thought that job stress contributes to developing hypertension in such individuals. Dr. Borzak testified that Claimant's morbid obesity, sleep apnea, and job stress are all risk factors contributing to his hypertension, but none of these risk factors reach a threshold of being clearly the cause of Claimant's hypertension.
25. Dr. Borzak testified that Claimant's 40-pound weight gain could have contributed to his blood pressure increasing, but it is not the cause of his hypertension. Yet Dr. Borzak testified that if Claimant lost weight, this weight loss could contribute to better blood pressure control. Dr. Borzak also testified that the hypertension guidelines do not include

a requirement or even a strong recommendation for sleep apnea testing or sleep apnea treatment for hypertension.

26. Finally, Dr. Borzak testified Claimant reached maximum medical improvement (MMI) on 11/9/2024 because his blood pressure was reasonable with no further plans for dose adjustment. He assigned an 11% PIR, per Class I of the hypertensive guidelines of the Florida Impairment Rating Guide.

THE HEART-LUNG STATUTE:

27. **Section 112.18-Firefighters and law enforcement or correctional officers; special provisions relative to disability:**

> (1)(a) Any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), or (3) caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death 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. However, any such firefighter, law enforcement officer, correctional officer, or correctional probation officer must have successfully passed a physical examination upon entering into any such service as a firefighter, law enforcement officer, correctional officer, or correctional probation officer, which examination failed to reveal any evidence of any such condition. Such presumption does not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

28. The Florida Supreme Court has described the presumption created in Section 112.18 as an expression of social policy, and thus held that it affects the burden of proof. *Caldwell v. Div. of Ret.,* 372 So. 2d 438, 440 (Fla. 1979). The parties here agree that Claimant meets all the requirements of the statutory presumption. But the heart-lung statute provides that E/C may rebut the presumption with competent evidence of non-occupational causation.

BURDEN OF PERSUASION STANDARD FOR REBUTTING THE STATUTORY PRESUMPTION:

29. The First District Court of Appeals has held that "if the Claimant relies solely on the statutory presumption, E/C can rebut that presumption with competent evidence; but if the Claimant adduces competent evidence of *occupational causation* in addition to the presumption, the E/C must have clear and convincing evidence to rebut the presumption."

Punsky v. Clay Cty. Sheriff's Off., 18 So. 3d 577, 584 (Fla. 1st DCA 2009) (emphasis added).

30. Dr. Borzak testified that Claimant's risk factors of morbid obesity, severe sleep apnea, and work-related stress all contribute to his hypertension, but do not rise to the level of being *causes* of the hypertension. According to Dr. Borzak, the cause of Claimant's essential or primary hypertension is unknown. I find Dr. Borzak's testimony does not support Claimant's position that his work-related stress as a police officer is the cause of his hypertension. I therefore conclude that E/C must rebut the presumption of occupational causation by competent evidence.

REBUTTING THE STATUTORY PRESUMPTION:

31. In order to rebut the statutory presumption, E/C must show that the disease (hypertension here) causing the disability was caused by a specific non-related, work event or exposure. *Caldwell,* 372 So. 2d at 441.
32. Here, Dr. Rosado testified that the hypertension is directly related to morbid obesity and severe sleep apnea, the triggering events that led to Claimant's hypertension. Dr. Rosado points to Claimant's 48-pound weight gain from 2020 to 2022 and elevated blood pressure from 133/68 to 147/99 in support of his testimony. That said, the medical evidence supports that Claimant had been obese since 2008 and the diagnosis of sleep apnea occurred after the date of the accident.
33. Dr. Rosado's diagnosis in the medical reports throughout Claimant's treatment was essential (primary) hypertension, not secondary hypertension. Based on Dr. Rosado's testimony, this diagnosis supports that there are no known causes for Claimant's hypertension. This is contrary to Dr. Rosado's opinion that Claimant's obesity and severe sleep apnea are the causes of his hypertension. I find this evidence thus fails to convincingly identify a specific non-related work event or exposure as the cause of Claimant's hypertension.
34. Moreover, on 9/2/2008, Claimant's sit-down blood pressure reading was 110/82 and weight was 234. On 4/23/2009, seven months after, Claimant blood pressure reading was 110/70 and weight was 238. After working 5 years as a police officer, Claimant's blood pressure was 140/80 and his weight at 220 on 7/26/2013. Although Claimant lost 18 pounds, his blood pressure reading was very elevated.

35. In 2015, the medical records reveal that Claimant's blood pressure was 139/77 and weight was 240. While Claimant had a 20-pound weight gain, his blood pressure decreased. In 2018, Claimant's blood pressure reading was 134/84, weight was 275. Although Claimant's weight in 2019 was 257, an 18-pound weight loss, Claimant blood pressure reading increased to 136/77.
36. While Claimant did gain 48 pounds from 2020 to 2022 with an elevated blood pressure of 147/99, the rest of his blood pressure readings, as listed above, did not always correlate to his weight gains and losses. I find the facts here do not support Dr. Rosado's conclusions that Claimant's non-occupational obesity and severe sleep apnea are the cause of his hypertension. As a result, I place very little weight on Dr. Rosado's testimony.
37. After carefully considering all the evidence, I find Dr. Rosado's testimony does not rise to the level of competent evidence to rebut the presumption under Section 112.18. Rather, I find the facts here support Dr. Borzak's testimony that the non-occupational conditions of obesity and sleep apnea are risk factors not causative factors of Claimant's hypertension. As I find that E/C has not provided competent evidence rebutting the presumption, the presumption under Section 112.18 still exists and Claimant's hypertension is compensable.

CLAIMS FOR MEDICAL CARE AND IMPAIRMENT INCOME BENEFITS:

38. Dr. Rosado and Dr. Borzak both testified Claimant needs care with a cardiologist for his hypertension. As this treatment is medically necessary to address Claimant's hypertension per both doctors, I find Claimant is entitled to treatment with a cardiologist.
39. I further accept Dr. Borzak's undisputed testimony that Claimant has an 11% PIR. I conclude Claimant is entitled to IIBs, with statutory penalties and interest based on the 11% PIR assigned by Dr. Borzak.

WHEREFORE, IT IS ORDERED:

1. Claim for compensability of Claimant's hypertension is granted. Claimant's hypertension is compensable under Section 112.18(1).
2. Claimant for authorization of a cardiologist for treatment of the hypertension is granted. E/C shall authorize a cardiologist to treat Claimant's hypertension.

3. Claim for payment of IIBs based on the 11% rating assigned by Dr. Borzak is granted. E/C shall pay Claimant IIBs based on the 11% PIR, with penalties and interest.
4. Claimant's attorney is entitled to E/C-paid attorney's fees and costs for securing the benefits here. Jurisdiction is reserved on the amount of the attorney's fees and costs for a future hearing, if the parties cannot resolve it.
5. The PFB filed 1/23/2025 is dismissed with prejudice.

DONE AND E-SERVED this 14th day of July, 2025, in Miami, Dade County, Florida.

Sylvia Medina-Shore
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