STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
WEST PALM BEACH DISTRICT OFFICE

Mark Shireman,
Employee/Claimant,

vs.

St. Lucie County Sheriff's Office/Florida Sheriffs Risk Management Fund (FSRMF),
Employer/Carrier/Servicing Agent.
_____/

OJCC Case No. 23-017487TAH

Accident date: 02/22/2023, 04/17/2023

Judge: Thomas A. Hedler

**FINAL COMPENSATION ORDER**

This matter came before the undersigned Judge of Compensation Claims on January 18, 2024 for final hearing[1] to adjudicate the petition for benefits, filed on July 13, 2023. The Claimant was represented by Kristine Callagy, Esquire. The Employer/Servicing Agent was represented by Rex Hurley, Esquire.

The following stipulations have been reached between the parties:

1. The undersigned has jurisdiction of the parties and of the subject matter.
2. Venue properly lies in St. Lucie County, Florida, which is assigned to the West Palm Beach District.
3. A mediation conference was held on October 31, 2023.
4. There was an Employer/Employee relationship at the time of the accident/claim.
5. The Employer was properly insured with workers' compensation coverage at the time of the accident/claim.
6. The base average weekly wage is $1,261.14.
7. Notice of final hearing was timely given to the parties.

[1] The hearing was conducted via video-conference on Zoom, as the accident occurred outside of Palm Beach County.

**Claims**

1. Compensability of disabling arterial and cardiovascular hypertension and/or heart disease. At the hearing, the Claimant conceded the claim is for heart disease.
2. Authorization, payment and scheduling of medical care and treatment with a cardiologist or appropriate physician to treat claimant's disabling heart disease.
3. Temporary total disability benefits from February 22, 2023 to March 1, 2023; March 17, 2023 to March 22, 2023; and, April 13, 2023 to May 12, 2023. At the final hearing, the Claimant narrowed the scope of indemnity, as reflected.
4. Penalties, interest, attorney's fees and costs.

**Defenses**

1. Not compensable, does not meet all presumption requirements of F.S. 112.18. If the presumption is determined to apply, it is rebutted.
2. No TTD due, no restrictions.
3. No penalties, interest, fees, or costs are due or owing.

**Exhibits**

**Judge:**

1. Petition for benefits, filed on July 13, 2023 [DN1], and petition for benefits, filed (23-17490TAH) on July 13, 2023 [DN1].
2. Response to petition for benefits, filed on July 19, 2023 [DN6], and response to petition for benefits, filed (23-17490TAH) on July 19, 2023.
3. Notice of pretrial stipulation filing date and final hearing, filed on August 24, 2023 [DN9].
4. Motion to consolidate, filed on November 14, 2023 and order granting same, entered on November 15, 2023 [DN10, 11].
5. Uniform pretrial stipulation, filed on November 17, 2023 and Order approving pretrial stipulation, entered on November 17, 2023 [DN13, 17].

6. Motion to amend pretrial stipulation, filed on January 3, 2024 and response, filed on January 10, 2024 [DN23, 24]. Prior to the final hearing, this matter was heard. The Employer/Servicing Agent sought to add/clarify its defenses by asserting, "congenital condition/bicuspid condition." On November 20, 2023, the Employer/Servicing Agent filed a clarification of defenses, to include: "Rebuttal – Specifically based upon the claimant's congenital condition/bicuspid condition." The Claimant argued that the Employer/Servicing Agent was attempting to add a new defense, without good cause, in violation of Rule 60Q-6.113(2)(a). The Claimant conceded that the condition sought in this matter is compensability of heart disease, in some part attributable to a congenital bicuspid condition. Accordingly, the Employer/Servicing Agent argued that it was merely clarifying its position – not adding a defense, since it is the Claimant's burden to establish compensability. Alternatively, the Employer/Servicing Agent asserted that the Claimant did not provide the Claimant's portion of the pretrial stipulation until November 16, 2023 (Thursday before the pretrial hearing on Tuesday, November 21, 2023); and, that counsel for the Employer/Servicing Agent was sick and asked an associate to complete the pretrial. Further, the Employer/Servicing Agent noted the clarification was filed before the pretrial hearing – on November 20, 2023. I find the clarification was filed prior to the pretrial hearing. I find the clarification merely specified the position, rather than add a new defense. I note that the claim for compensability was generically 'heart disease' – without specificity. And, I find the Employer/Servicing Agent, alternatively, presented good cause via the Claimant's late submission and counsel's illness. Accordingly, the motion to amend is **GRANTED**.
7. Claimant's trial memorandum [DN29] and Employer/Servicing Agent's trial memorandum [DN26-28] - for argument purposes only.

**Joint:**

1. Thirteen-week wage statement, filed on January 12, 2024 [DN39].

**Claimant:**

1. Deposition transcript of Dr. Steven Borzak, with attachments, filed on January 16, 2024 [DN42-47]. The Employer/Servicing Agent's objections on pages 16 and 17 are sustained.
2. Pre-employment physical, filed on January 16, 2024 [DN48].
3. Payroll records, filed on January 16, 2024 [DN49].
4. Time records, filed on January 16, 2024 [DN50].

**Employer/Servicing Agent:**

1. Deposition transcript of Dr. David Perloff, with attachments, filed on January 12, 2024 [DN37].
2. Deposition transcript of the Claimant, Mark Shireman, filed on January 12, 2024 [DN35].

**Live Witnesses**

**Claimant:**

1. Mark Shireman, Claimant.

**Employer/Servicing Agent:**

None

I have taken the time to carefully review and consider all of the evidence presented to me, including the documentary evidence, deposition testimony, and live testimony. While I do not recite in explicit detail each piece of evidence/testimony, I have attempted to resolve any and all conflicts in the testimony and evidence. The stipulations of the parties are adopted and shall become part of the findings of fact herein. The undersigned has jurisdiction of the parties and subject matter. Based upon the stipulations of the parties, evidence presented and legal review, I make the following findings of ultimate facts and conclusions of law.

## Factual Findings & Conclusions of Law

The Claimant is a 55-year-old detective with the St. Lucie County Sheriff's Office. The Claimant began working for the insured in April of 2017. He has been a certified law enforcement officer since 1994. The Claimant testified that he has regularly engaged in a rather rigorous exercise regimen, including running two miles to the gym, working out for forty-five minutes, before walking home, as well as monthly cycling trips of approximately 30-50 miles. On February 22, 2023, the Claimant was performing an annual physical fitness test for the insured. The Claimant testified that about half-way through the test, he began experiencing symptoms of dizziness and tunnel vision, before passing out. He was transported to HCA Florida Lawnwood Hospital ("Lawnwood").

The record from Lawnwood for date of service February 23, 2023 reveals the Claimant had a history of PVCs and cardiac murmur and was admitted due to syncope. Specifically, the report documents the Claimant "was doing a fitness test…[r]unning in a field doing some strenuous activity…[j]umping over a fence and then squatting down to maneuver under an object." The Claimant passed out during the test. The note further records, "[h]e is very physically active and runs regularly." The attending provider, Dr. Babar Shareef, concluded, "[g]iven abnormality noted on EKG and exertional syncope along with family history of CAD would recommend proceeding with nuclear stress testing." On February 24, 2023, the Claimant underwent the nuclear stress test, during which the Claimant developed a blocked left bundle branch. Dr. Shareef recommended a cardiac catheterization.

On March 17, 2023 (at the University of Miami Hospital), the Claimant underwent the cardiac catheterization, which did not reveal evidence of obstructive coronary disease. On April 17, 2023 (also, at the University of Miami Hospital), he underwent an aortic valve replacement.

The Claimant presents the instant claim(s) for compensability of heart disease, in accordance with section 112.18, Florida Statutes. The Employer/Servicing Agent challenges the presumption, and, alternatively, seeks

to rebut the presumption. Section 112.18(1), Florida Statutes, provides that if: (1) the Claimant is a member of the protected class of law enforcement officers; (2) the Claimant has a protected condition of heart disease; (3) the Claimant entered service as a law enforcement officer with no evidence of heart disease; and, (4) the Claimant suffered a disability restricting him from performing his duties as a law enforcement officer, then the Claimant is afforded a presumption that the Claimant's heart disease is compensable.

I find the undisputed evidence establishes (and the Employer/Servicing Agent does not challenge) that the Claimant is a member of the protected class of law enforcement officers; that his pre-employment physical did not reveal evidence of heart disease; and, that the Claimant suffered a disability restricting him from performing his duties as a law enforcement officer. As to disability, both IME providers expressly testified that he was disabled on February 22, 2023 and April 17, 2023.

Nevertheless, the Employer/Servicing Agent argues the Claimant did not establish that he had a condition caused by heart disease. To that end, the Employer/Servicing Agent contends the Claimant was diagnosed with aortic stenosis, but that he failed to prove this condition was caused by heart disease. The Employer/Servicing Agent principally relies upon the following testimony from Dr. Borzak, "are you able to identify the cause of Mr. Shireman's aortic stenosis? No."[2] However, Dr. Borzak also testified that people with bicuspid valves have greater incidences of early aortic stenosis (occurring in ages of 50s rather than 70s), and Dr. Perloff testified similarly.[3] Nevertheless, I accept the plainly stated testimony of Dr. Perloff that the aortic stenosis was caused by the Claimant's bicuspid aortic valve, which is classified as heart disease.[4] While not expressly asserted, to the extent the Employer/Servicing Agent may be relying upon the recent opinion of *N. Collier Fire Control & Rescue Dist. v. Harlem*, 371 So. 3d 368 (Fla. 1st DCA 2023), I conclude the case is distinguishable in that the

[2] *Pages 14, 15.*
[3] *Pages 21, 22.*
[4] *Pages 17, 18.*

instant Claimant underwent a valve replacement. I find the Claimant has established the criteria for the presumption under section 112.18.

In that the presumption that the Claimant's heart disease was work-related has been established pursuant to §112.18, the burden shifts to the Employer/Servicing Agent to establish a non-work-related cause of the condition. *Caldwell v. Division of Retirement*, 372 So. 2d 438 (Fla. 1979). The presumption of occupational causation remains with the Claimant and is itself sufficient to support an ultimate finding of occupational causation, unless overcome by evidence of sufficient weight to satisfy the trier of fact that the heart disease had a non-industrial cause. *McDonald v. City of Jacksonville*, 286 So. 3d 792 (Fla. 1st DCA 2019). In *City of Jacksonville v. Ratliff*, 217 So. 3d 183 (Fla. 1st DCA 2017), the court reiterated, "the necessity of application of a two-tiered rebuttal analysis when the subject heart disease results from a combination of an underlying condition with a 'triggering event.' See *Mitchell v. Miami Dade Cty.*, 186 So. 3d 65 (Fla. 1st DCA 2016) (Mitchell II) (concluding even if Claimant's condition was congenital and non-work related, if medical testimony establishes that the combination of the congenital or underlying condition and a 'trigger' cause of the heart disease, the E/C must also establish through the required quantum of evidence that the 'trigger' was also non-occupational)."

I find the Claimant's heart disease (aortic stenosis resulting in valve replacement) was caused by the combination of a congenital and triggering event.[5] In the instant matter, there is little dispute that a cause of the Claimant's heart disease was non-occupational – both IME providers testified that the disabling condition was in some way attributable to the Claimant's bicuspid aortic valve, a condition that is conceded by Claimant to be congenital and non-occupational. Nevertheless, I find the Employer/Servicing Agent did not meet its burden in rebutting the presumption by establishing that the trigger was also non-occupational. While Dr. Borzak provided some conflicting testimony as it relates to the trigger and Dr. Perloff testified generically that the Claimant's

[5] *See Dr. Perloff's testimony on page 20.*

occupation was not a trigger, I find there is competent medical evidence establishing that the aortic stenosis and resulting valve replacement was provoked by the occupational physical fitness test.

Again, there were two admissible medical opinions presented – the IME providers, Dr. Borzak (for the Claimant) and Dr. Perloff (for the Employer/Servicing Agent). Dr. Borzak performed a medical records review IME on November 12, 2023. Dr. Borzak reviewed records from the University of Miami, Lawnwood Hospital, some outpatient testing, as well as the pre-employment physical. Dr. Borzak testified via deposition on December 28, 2023. As it relates to the trigger issue, Dr. Borzak testified that the occupational physical fitness test enhanced or provoked his symptoms. He explained, "it's typical that the symptoms of aortic stenosis first present during exertion because the obstruction to flow caused by the stenotic valve allows for enough blood flow during rest, but when the heart has to provide increased blood flow due to the demands of exercise that it can't accommodate those needs."[6] Further, Dr. Borzak explained there is a distinction between the Claimant's regular non-occupational exercise and the occupational physical fitness test in question - "in a stress lab, the exercise is almost always conducted on an incline and that can pose an additional physiologic stress…it's a Bruce protocol. So that's pretty aggressive."[7] Specifically, Dr. Borzak also testified:

> Q – Would you agree that the physical fitness test that he did on February 22, 2023, was the trigger of his valvular issues that ended up with him needing the replacement surgery?
>
> A – Yes. Although if he had not had the stress test at that time, his symptoms would've manifested themselves at a later date and he would've would up with the same procedure, just not at that time. *See page 17.*
>
> Q – So would the physical fitness test kind of be like the straw that broke the camel's back for him?

[6] *Page 11.*
[7] *Page 11.*

A – I guess…aortic stenosis progresses with time. So he – he eventually would've developed symptoms with exertion and come home from a run one day and say, gee, you know, honey, I – I used to be able to do this in 20 minutes and now it took me 25. Something's – something's funny here. I must be getting old. **That's the usual sort of presentation rather than the dramatic collapse on the treadmill presentation.**
*See page 18.* [emphasis added]

Q – Did the physical test on February 22, 2023 cause the aortic stenosis to become symptomatic for Mr. Shireman?

A – Yes.
*See page 26.*

Dr. Perloff performed a medical records review IME on November 26, 2023 and December 13, 2023. Dr. Perloff reviewed the pre-employment physical, as well as the pertinent records from HCA Florida Lawnwood and the University of Miami Hospital. Dr. Perloff provided deposition testimony on December 19, 2023. Dr. Perloff testified that aortic stenosis is almost universally due to bicuspid aortic valve degeneration. While Dr. Perloff testified, "[h]e likely had a syncopal episode due to aortic stenosis from the bicuspid valve", he thereafter qualified that opinion by declining to state the syncopal episode was 'completely caused' by his aortic stenosis (caused by the bicuspid valve) – "[c]ertainly, I think it was probably worsened by the fact that he may have been a little dehydrated, and…there are usually other factors that are involved there."[8] Dr. Perloff also offered the following testimony germane to the trigger issue:

Q – Now, those types of strenuous exercise, weightlifting, running, would you agree that that can increase somebody's blood pressure?

A – Yes. That is correct.

Q – And when somebody's blood pressure is increased, that puts strain on the heart?

A – That is correct.
*See page 36.*

[8] *See pages 18, 19.*

Q – Would you agree that on the date of accident when Mr. Shireman was running during that physical fitness test, his adrenaline would be high?

A – Yes.

Q- Would you agree that while he was doing that physical fitness test, his heart rate would probably be high as well?

A – Yes.
*Page 37.*

Q – Would you agree that the physical fitness test he was doing on February 22, 2023 led to his hospitalization?

A – Yes.
*See page 39.*

Q – Would you agree that the physical fitness test was the trigger for his cardiac event leading to the valve replacement surgery?

A – I would give you that the – that the physical fitness test was the trigger for his syncopal episode, which indicated that he required a valve replacement…I don't want to give the impression that there was something about the physical fitness test that actually triggered his valve to be worse or changed his valve in some way. The fact was that his valve was bad, and it was the physical fitness test that was the heralding event for what showed us that his valve was no longer fine and was a problem and needed to be replaced.
*See page 40.*

Q – Would you agree…that the condition became symptomatic while Mr. Shireman was on the job doing his physical fitness test?

A – Yes, I would.

Q – Would you agree that the valve condition became symptomatic because of his job as a sheriff deputy?

A – I think that's fair because…the physical fitness test was part of his job, and that's what led to him becoming symptomatic. Yes.
*Page 41.*

I find the crux of the testimonies of Drs. Borzak and Perloff concede that the Claimant's bicuspid aortic valve was a congenital condition that ultimately led to his aortic stenosis, but, also, that the disabling event on February 22, 2023 was triggered by the physical fitness test. Again, while the Claimant's congenital condition would likely have led to his need for valve replacement upon complications from aortic stenosis, the Claimant's occupational fitness test was the triggering event for the disabling event on February 22, 2023 and resulting requirement for valve replacement on April 17, 2023. Though the provider's testimony was somewhat inconsistent as it relates to the trigger analysis, I find the substance of Drs. Perloff and Borzak' testimony supports the basis for a finding that the occupational physical fitness test was the trigger. Accordingly, I find the Employer/Servicing Agent failed to meet its burden to establish that the trigger was also non-occupational.

So, while the Employer/Servicing Agent established that a (or underlying) cause of the Claimant's disabling heart disease was non-occupational, i.e., the congenital bicuspid valve, the Employer/Servicing Agent did not rebut the presumption that the condition was also triggered by a non-occupational factor. Therefore, I conclude the presumption remains – the Claimant's disabling heart disease is presumed (as a matter of law) to be occupational in nature, under section 112.18. There was no substantive dispute that if the disabling heart disease was determined to be compensable, the Claimant would be entitled to authorized medical care with a cardiologist or appropriate physician. Both IME providers testified the Claimant requires ongoing evaluation and treatment.

The claim for TTD benefits was primarily presented upon the Claimant's testimony regarding his hospitalization and/or employment following the valve replacement surgery. I find the Claimant has failed to meet his burden to establish entitlement to TTD benefits. While the claim for TTD has some rational basis, neither Dr. Perloff or Dr. Borzak addressed the Claimant's work status. Each provider was asked generically whether the Claimant was disabled on February 22, 2023 and April 17, 2023 – to establish the presumption. Neither

doctor addressed the Claimant's hospitalization(s); neither addressed the Claimant's abilities to work; and, neither testified specifically or substantively that the Claimant was on a 'no work' status or otherwise physically precluded from any work as a result of his disabling heart disease. And, even the testimony regarding the disability for February 22, 2023 and April 17, 2023 did not specify *total* disability to warrant TTD benefits. Accordingly, I find the Claimant did not meet his burden to establish TTD benefits for the periods claimed.

WHEREFORE, it is **ORDERED and ADJUDGED** that:

1. The claim for compensability of claimant's disabling heart disease is **GRANTED**.
2. The claim for authorization, payment and scheduling of medical care and treatment with a cardiologist or appropriate physician to treat claimant's disabling heart disease is **GRANTED**.
3. The claim for temporary total disability benefits from February 22, 2023 to March 1, 2023; March 17, 2023 to March 22, 2023; and, April 13, 2023 to May 12, 2023 is **DENIED**.
4. The claim for penalties and interest is **DENIED**.
5. The claim for attorney's fees and costs is **GRANTED**.

DONE AND SERVED this 16th day of February, 2024, in West Palm Beach, Palm Beach County, Florida.

Thomas A. Hedler
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