

MIKRS

CASE LAW UPDATE... *January 2014*

CASE 1:

Manuel Jose v. Goodwill Industries and Gallagher Bassett Services, Inc.
Case No. 1D13-1707 (Fla. 1st DCA January 23, 2014)

Claimant appealed the Judge of Compensation Claim's denial of the Claimant's Petition for Benefits filed after the Claimant fainted and fell at work due to lack of objective medical evidence.

Facts: On July 28, 2011, Claimant worked as a helper at Goodwill Industries, loading bales of fabric or clothing into a machine and then operating a switch on the machine. While the Claimant was leaning forward to operate the switch on the machine, he fainted and fell to the ground.

The Claimant was evaluated by two IMEs. The Claimant's IME, Dr. Nicholas Suite, diagnosed post-concussive syndrome, post-traumatic headaches, cervical myofascial syndrome, left shoulder derangement, mild lumbar myofascial syndrome, and left rib pain. Dr. Suite initially opined that all conditions were causally related to Claimant's fall, based on Claimant's description of the incident. When asked for objective medical findings supporting his diagnoses, Dr. Suite admitted that the headaches, the left shoulder derangement, and the rib pain all were based solely on Claimant's subjective complaints. Dr. Suite agreed that the x-rays and CT scan, taken at the hospital after Claimant fell, revealed no injuries. Dr. Suite opined that the remaining diagnoses were based on his observations of the Claimant's slow speech, unsteady gait, and range-of-motion assessment. Dr. Suite ultimately conceded that there was no objective medical evidence connecting these conditions to any injury Claimant sustained in the workplace fall.

The Employer/Carrier's IME, Dr. Paul Damski, found Claimant's main complaints of pain were left rib pain, bilateral shoulder, and right neck. The First DCA noted that although Dr. Damski's medical report mentioned existence of "various hematomas" indicated in the hospital CT scan, the report stated, "No actual injury to his rib cage was noted on x-rays," "no skull fracture," and "no chest pathology on x-ray." Since the Claimant did not complain of shoulder and neck pain at the hospital and the Claimant could not really tell the doctor when it started, Dr. Damski opined that he could not connect Claimant's shoulder and neck pain to the fall. The First DCA also noted that although Dr. Damski affirmed that some of the pain Claimant was experiencing resulted from his fall, the doctor did not identify a specific fall-related injury causing such pain.

Holding: The First DCA noted that although Claimant raised several issues on appeal, the First DCA concluded that the Claimant failed to prove he suffered an objective injury caused by the fall suffered in the workplace. Specifically, the First DCA noted that the Claimant did not establish existence of an injury through requisite medical testimony.

An employer must provide workers' compensation benefits if an employee "suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment." § 440.09(1), Fla. Stat. (2011). To be compensable under chapter 440, "[t]he injury, its occupational cause, and any resulting manifestations or disability *must be established to a reasonable degree of medical certainty, based on objective relevant medical findings[.]*" § 440.09(1), Fla. Stat. (emphasis added). The First DCA concluded that the Claimant failed to establish this through objective medical findings.

The First DCA noted that although the record demonstrated that the hospital CT scan taken on the date of Claimant's accident revealed a hematoma and some hemorrhaging, neither IME physicians were asked whether these conditions constituted objective medical evidence of an injury related to Claimant's fall. Thus, the First DCA concluded that the Claimant presented no admissible medical testimony that, within a degree of medical certainty, the CT scan showed he suffered an injury from the workplace fall. Due to Claimant's failure to produce objective medical findings substantiating an injury resulting from his fall at work, the First DCA affirmed the JCC's Order denying the Claimant's Petition for Benefits.

CASE 2:

Robert Young v. American Airlines and Sedgwick Case No. 1D13-1273 (Fla. 1st DCA December 31, 2013)

Claimant appealed the Judge of Compensation Claim's decision on remand, of denying PTD benefits based on opinions of Claimant's medical witness.

Facts: The First DCA noted that this was second time this workers' compensation case had come before the court. In Young v. American Airlines & Sedgwick, 100 So. 3d 1168, 1170 (Fla. 1st DCA 2012), the First DCA reversed an order of the Judge of Compensation Claims, which denied Claimant's petition for permanent total disability (PTD) benefits. The First DCA based their conclusion on that the JCC erred in admitting and relying upon an unauthenticated report from the Employer/Carrier's IME. Id. at 1169. The First DCA then remanded the case with instructions to the JCC to enter a final order awarding PTD benefits based on the uncontroverted opinions of Dr. Kleinhaus, unless the JCC found the opinions unpersuasive. On remand, the JCC rejected Dr. Kleinhaus's opinions because the doctor was not persuasive.

Holding: The First DCA noted that the JCC provided no additional factual or legal reasons for the rejection of Dr. Kleinhaus's uncontested expert opinions regarding Claimant's status as having reached maximum medical improvement and his permanent work restrictions. The First DCA agreed with the Claimant's argument that the JCC erred by rejecting Dr. Kleinhaus's uncontroverted medical opinions because no legally valid basis for such rejection was provided by the JCC. The First DCA concluded that the JCC erred by failing to provide a valid reason for

rejecting the unrefuted medical opinions based on findings such as flawed medical history, inherent illogic or incredibility, or any other reasonable basis for finding Dr. Kleinhaus's opinions unreliable or unworthy of belief. Wald v. Grainger, 64 So. 3d 1201 (Fla. 2011); see also Feacher v. Total Emp. Leasing/Guarantee Ins. Co., 61 So. 3d 1236, 1237 (Fla. 1st DCA 2011) citing Vadala v. Polk Cnty. Sch. Bd., 822 So. 2d 582, 584 (Fla. 1st DCA 2002) (holding that JCC may reject unrefuted medical testimony but must give legally valid reason).

Therefore, the First DCA reversed the JCC's Order in its entirety and remanded with instructions for entry of a final order awarding PTD benefits along with the applicable penalties, interest, attorney's fees, and costs.