MKRS LAW

MARCH 2014 Case Law Update

Luces v. Red Ventures
Case No. 1D13-1001 (Fla. 1st DCA February 28, 2014).

Facts: The JCC disapproved the parties' settlement stipulation regarding $1,500.00 in attorney's fees payable by the Employer/Carrier to Claimant's counsel under Fla. Stat. § 440.34(3)(a), as the JCC ruled that Claimant's counsel did not secure only (or perhaps any) medical benefits for the Claimant. The JCC redirected the $1,500.00 attorney's fee from counsel to the Claimant, contrary to any apparent intention or agreement of the parties.

Holding: The First DCA ruled that the JCC was without authority to reform the parties' stipulation and remit the $1,500.00 to the Claimant as an exercise of plenary equitable jurisdiction. *See Bend v. Shamrock Servs.,* 59 So.3d 153 (Fla. 1st DCA 2011). The denial of the fee was affirmed, and on remand, the parties were permitted to alternatively petition for approval of attorney's fees payable to Claimant's counsel under Fla. Stat. § 440.34(3)(b).

Take-away: If a $1,500.00 medical-only fee is not approved, it is wise to file a Motion for Rehearing if the fee is unilaterally remitted to the Claimant by the JCC (especially if you have included protection language in your Mediation Agreement).

Jones v. Shadow Trailers, Inc.
Case No. 1D13-4168 (Fla. 1st DCA March 18, 2014).

Facts: In another fee entitlement case, the parties agreed that the Employer/Carrier conceded to Claimant's entitlement to benefits claimed in a Petition for Benefits, eight days after the Employer/Carrier received the Petition. The JCC denied the Claimant's request for an Employer/Carrier-paid "medical-only" attorney's fee pursuant to Fla. Stat. § 440.34(3)(a). The Claimant argued that he is due Employer/Carrier-paid "medical-only" fees as per *Allen v. Tyrone Square 6 AMC Theaters*, 731 So.2d 699 (Fla. 1st DCA 1999), wherein the Court held that "[when a specific request for reasonable and necessary medical care is made, the employer is under an obligation to provide the benefits within a reasonable time- whether a petition for medical benefits is ever filed, or not."

Holding: The First DCA affirmed the denial of the fee, stating that *Allen* was decided prior to a 2002 amendment to Fla. Stat. § 440.34(3), which added the language that, "[r]egardless of the date benefits were initially requested, attorney's fees shall not attach under this subsection until 30 days after the date the [Employer/Carrier]…receives the petition." This amendment supersedes the rule in *Allen* for dates of accident since the amendment went into effect, creating a bright-line rule for the attachment of Employer/Carrier-paid attorney's fees under every sub-section of Fla. Stat. § 440.34.

Take away: Even if the parties stipulate to "medical only" fee entitlement, the JCC may not approve it if the pleadings make it clear that benefits were provided timely by the Employer/Carrier.

White v. State of Florida, Doc Holmes Correctional Institute
Case No. 1D13-2631 (Fla. 1st DCA March 4, 2014)

Facts: Claimant was involved in an accident which was accepted as compensable under the pay and investigate provisions of Fla. Stat. § 440.20(4). The claim was denied within the 120 days, and the JCC ruled that the claim was not compensable. The Claimant alternatively requested payment of impairment income benefits (IIBs) based upon a permanent impairment rating (PIR) assigned during the 120-day period, prior to the denial. The JCC denied entitlement to IIBs, and the Claimant appealed both decisions.

Holding: Fla. Stat. § 440.15(3)(a) and (c) provide that IIBs are payable when the employee reaches the date of MMI and upon an establishment of a "permanent impairment." Fla. Stat. § 440.02(22) defines "permanent impairment" as "existing after the date of MMI." Although there was competent, substantial evidence to support a finding that the Claimant had been assigned a 10% PIR, there was no evidence to support a finding of MMI. Although the Claimant argued that the parties had agreed on an MMI date, a JCC should not accept a stipulation on a date of MMI where the evidence is at variance with the stipulation. *See Buttrick v. By the Sea Resorts, Inc.*, 108 So.3d 658, 659 (Fla. 1st DCA 2013). The First DCA reasoned that the same document which indicated the physician's assignment of the 10% PIR also reflected "NO" in response to the question of whether the Claimant had reached MMI. As such, the First DCA agreed with the JCC that the Employer/Carrier was not liable for payment of IIBs during the compensable portion of the 120-day period.

Take away: Although it is not clear how the authorized physician would have assigned a PIR without addressing MMI, certain benefits are not "automatically due" simply because they arose during the 120-day period. However, this opinion should not be taken too far as to believe that the Employer/Carrier is "off the hook" for payment of certain benefits, even if they timely deny compensability during the 120-day period (as adjudicated by a JCC).