

**Dilma Celeny Santizo Perez v. Genaro's Corporation**  
**d/b/a King's Food and Meat Bazaar** (1<sup>st</sup> DCA 5/19/2014)

**Facts:** Surviving dependents of an employee of King's Food challenge Order from JCC denying compensability of accident, injuries, and death. Claimant began to gather shopping carts from King's parking lot and he was struck by car and died a few weeks later of severe brain injuries. Driver claimed his actions were in reaction to Claimant sexually harassing his girlfriend, a cashier at Kings.

**Issue:** Whether Claimant's injury can be found to be "Arising out of his employment."

**Reasoning:** In general terms, when a work-related risk brings about injury, the injury is compensable vis-à-vis those that are brought about by risks personal in nature, which are not. Some jobs are more prone to workplace assaults than are others. Usually this is so because of one or both of the following factors: (1) the nature of the job, e.g., dangerous duties; and (2) the nature of the environment of the job, e.g., dangerous locations.

This case is analogous to Tampa Maid, wherein a love triangle among three co-workers resulted in Claimant being assaulted with a knife. Specifically, both there and here, it was the interaction of people connected only by the workplace that prompted the accident, and therefore, we reach the same conclusion of compensability. As Claimant was both in course and scope of his employment and his injury did indeed arise from his employment, his injuries and death are legally compensable.

**Holding:** DCA concluded the JCC erred in denying compensability. The inquiry is not as to fault; rather is it merely "of marking out boundaries." In this case, it was the environment; the decedent was collecting shopping carts at night. While the Claimant had no apprehension of personal animosity of a co-worker's jealous boyfriend, there is no question the genesis for the "dispute" giving rise to the fatal injuries here was in the workplace.

**Take Away:** Case is compensable under "arising out of employment" when EITHER are shown (1) the facts show that the persons involved are connected because of the workplace **OR** (2) the nature of the job and/or the location involves a "danger"

**JOHNS EASTERN COMPANY and INDIAN RIVER COUNTY BCC,**  
**Appellants, v. JERALD BELLAMY**

ON APPELLANTS' MOTIONS FOR CLARIFICATION, REHEARING, REHEARING EN  
BANC AND APPELLEE'S MOTION FOR REHEARING [[39 Fla. L. Weekly D553a](#)]

An appeal from Order of JCC Rosen, date of accident 1/20/12 regarding attorney's fees. DCA vacated the order denying fees.

**Facts:** A question of compensability for a fire fighter for hypertension and premature ventricular contractions and E/C obligation to overcome the rebuttable presumption of occupational causation.

**Holding:** The JCC found the E/C failed to rebut the presumption of occupational causation and therefore attorney's fees/costs were awardable.

**STEVEN M. LORD, Appellant, v. SANTA ROSA CORRECTIONAL INSTITUTE / THE**  
**DIVISION OF RISK MANAGEMENT**

39 Fla. L. Weekly D870b

An appeal from an Order where JCC Winn awarded approximately half of the requested attorney's fees. DCA reversed the exclusion of the remainder of fees because entitlement to fees was tied to the securing of a benefit, the amount of fee should include all attorney time reasonably associated with securing that benefit.

**Facts:** Claimant suffered a compensable injury on September 28, 1999, and the E/C accepted the injury as compensable and authorized Dr. Kalaji as Claimant's primary care provider (PCP). Eventually, Dr. Kalaji discontinued seeing workers' compensation patients, and Claimant requested authorization of a new PCP. At mediation, E/C agreed to authorize a new PCP, and stipulated to fee entitlement. The E/C had trouble finding a doctor who would agree to serve as PCP for Claimant, during which time the Claimant moved to enforce the mediation agreement. The E/C's selected Dr. VerVoort to be Claimant's new PCP.

**Analysis:** The JCC did not include the fees incurred between the mediation and the authorization of Dr. VerVoort.

**Reasoning:** The question before the JCC was the *amount* of the attorney's fee award, not entitlement to a fee. The proper legal test for the amount of fee is whether the attorney time alleged was reasonable and required to secure the benefit.

**Holding:** It was error for the JCC to conceptualize the attorney time as two distinct periods of "entitlement" because all of the fees in dispute were alleged to be associated with a single benefit. Entitlement had already been stipulated to.

**Take Away:** When you stipulate to fee entitlement on a benefit, it stops the clock only for the period of time up to point of the stipulation/agreement; if there is a delay or dispute about that benefit later, the stipulation on entitlement remains, but the time starts ticking again until the benefit is actually provided.