

**Emerita O. Flores-Orellana v. Circle-K and Constitution State Services
Case No. 1D14-2055 (August 5, 2014)**

as of this writing - on rehearing filed by both the E/C and the OJCC

Facts: The Claimant was adjudicated permanently and totally disabled in January 2011 and reached an agreement with her Employer to settle a separate wage claim under the federal Fair Labor Standards Act. Following dismissal of that federal claim based on settlement, the E/C discontinued payment of the Claimant's PTD benefits. As such, the Claimant filed a PFB seeking reinstatement of same. The E/C filed a motion for summary final order on the grounds that the Claimant had settled both her federal claim and workers' compensation claim against the Employer when she signed a release in the federal wage claim. The Judge of Compensation Claims (JCC) denied the E/C motion and the matter proceeded to final hearing. On the date of the final hearing, the JCC entered an order cancelling the final hearing, dismissing the Claimant's PFB, declaring the proceedings to be a modification proceeding under Fla. Sta. Section 440.28, and instructing the parties to coordinate a hearing to address modification of the order awarding the Claimant PTD benefits. On September 3, 2013, a federal court judge granted the Claimant's motion to set aside the previously entered into settlement and the E/C then reinstated the Claimant's PTD benefits. In April 2014, the Claimant filed a Motion asking the JCC to reset the hearing on the modification matter. The JCC denied the Claimant's motion. Petitioner/Claimant then sought writ of mandamus requesting the First DCA to order the JCC to schedule a hearing on the action pending under Fla. Stat. 440.28.

Holding: First DCA granted the petition for writ of mandamus as the Petitioner/Claimant demonstrated a clear legal right on her part, an indisputable legal duty on the part of the respondent and that no other adequate remedy existed. The JCC was directed to provide the parties notice of a final hearing to address the E/C's request for modification within a reasonable time, not to exceed 30 days, from issuance of the mandate.

**Walter Vega v. FRS Environmental Remediators and Accord Human
Resources/Risk Enterprised Management
Case No. 1D13-5947 (July 28, 2014)**

Facts: The Claimant challenges an order of the Judge of Compensation Claims (JCC) that concludes the Claimant is disqualified under Fla. Sta. Section 440.09(4) from all benefits otherwise available to him.

Holding: First DCA found no error in the JCC's conclusion that the Claimant has forfeited his entitled to workers' compensation benefits because the record evidence supports the JCC's finding that the Claimant was convicted and adjudicated of workers' compensation fraud under Fla. Sta. Section 440.105. First DCA affirmed the JCC's order and further concluded that the Claimant failed to present a preliminary basis for the reversal of the JCC's order.