

Mitchell v. Osceola County School Board, et al

Case No. 1D14-2875 (3/10/15)

Lower Tribunal Case(s): 12-028130TWS

Issue – Whether the Judge of Compensation Claims (JCC) used the proper legal standard in concluding that Osceola County School Board (OCSB) was not a statutory employer under section 440.10(1)(b) of the Florida Statutes.

The Claimant appealed the JCC's order determining that she had failed to establish an employer-employee relationship with OCSB.

The Claimant was assisting a veterinary clinic for Pawsitive Action (a non-profit) housed at a high school in Osceola County when she was bitten by a dog. The Claimant filed multiple Petitions for Benefits (PFB) against OCSB as her statutory or special employer.

The only issue for determination by the JCC at the Final Hearing was whether an employer-employee relationship existed between OCSB and the Claimant. Claimant argued that under section 440.10(1)(b), OCSB was her statutory employer. That section provides that:

“In case a contractor sublets any part or parts of his or her contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employed in one and the same business or establishment, and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment.”

The JCC concluded that OCSB was not the Claimant's statutory employer, finding that there was no evidence of a contractual obligation owed to a third party and then sublet to Pawsitive Action by OCSB.

The Court agreed that while there was no formal written contract between OCSB and Pawsitive Action, it noted that the contractual obligation could be implied, and did not need to be in a written contract. The Court determined that the JCC provided insufficient legal analysis as to whether the advertising published by OCSB comprised a contractual offer that could be accepted by members of the public to form a contract. The Court pointed out

that the evidence showed that Pawsitive Action and the high school had a “business partnership” where students in the school's veterinary assisting program were given the opportunity to obtain required clinical hours by volunteering. The Court was particularly swayed by the fact that OCSB had prepared a pamphlet entitled “Harmony High School Veterinary Assisting Pet Clinic” which described the school's program and the low-cost services available at the veterinary clinic. It also noted the pamphlet was published by OCSB and distributed at the front desk of at the high school. The pamphlet mentions the students “participate in all areas of clinic procedures and provide animal care under the direct supervision of licensed veterinarians, vet technicians, vet assistants or program instructors.”

The Court relied on its decision in *Antinarelli v. Ocean Suite Hotel*, 642 So.2d 661, 663–64 (Fla. 1st DCA 1994), where the Court held that a hotel met the definition of a statutory employer for employees of the hotel restaurant, which was not owned or operated by the hotel, where the hotel provided guests with meal vouchers redeemable only at the specified restaurant. Applying their reasoning in *Antinarelli*, the Court concluded that there was evidence that could establish a contract between OCSB and the community for low-cost veterinary services as evidenced by the pamphlet prepared by OCSB for the purpose of offering veterinary services to county residents, as well as concluding that the evidence could also support a finding that some portion of OCSB's contractual obligation to county residents for veterinary services, as offered by the pamphlet, was sublet by OCSB to Pawsitive Action. Accordingly, because the Court was uncertain that the JCC employed the correct standards in reaching his decision, it reversed and remanded back to the JCC for reconsideration of the evidence using the proper standards.

Jovita Cortes-Martinez v. Palmetto Vegetable Co., LLC

Case No. 1D14-1825 (3/10/2015)
Lower Tribunal Case(s): 12-002297DBB

Issue – Whether the JCC erred in her interpretation of section 440.34, which addresses attorney's fees.

In this case, the parties agreed to settle the claim and agreed to attorney's fees based on the statutory formula laid out in section 440.34(1) . The parties also agreed that the Employer/Carrier (E/C) would pay an additional attorney's fee based on Claimant's attorney having secured additional benefits as the result of prior litigation.

Section 440.34(1) deals with guideline attorney fees and provides that:

“A fee, gratuity, or other consideration may not be paid for a claimant in connection with any proceedings arising under this chapter, unless approved by the judge of compensation

claims or court having jurisdiction over such proceedings. Any attorney's fee approved by a judge of compensation claims for benefits secured on behalf of a claimant must equal to 20 percent of the first \$5,000 of the amount of the benefits secured, 15 percent of the next \$5,000 of the amount of the benefits secured, 10 percent of the remaining amount of the benefits secured to be provided during the first 10 years after the date the claim is filed, and 5 percent of the benefits secured after 10 years."

The JCC approved the fee on the settlement of the claim, but refused to award the second fee from the prior litigation. The JCC reasoned that the guideline scheme of \$5,000/\$5,000/10% applied to the entire case as a whole, not to individual claims.

The Court reversed the JCC's decision on the basis that it was not supported by the language of the statute. The Court pointed out that if "the" claim can be only the first claim filed, then contested medical benefits secured by an attorney for a claimant more than five years after the first claim is filed would not result in the payment of any fee because there would be no "benefits secured" upon which the formula could be applied. The Court noted that such a reading would vitiate the guarantees in sections 440.34(3)(a)(b)&(c), which provide that a "claimant is entitled to recover an attorney's fee" in proceedings where he or she successfully asserts a petition for medical benefits only or where the injured person has employed an attorney in the successful prosecution of a petition that has been denied by the employer or carrier.

Thus, the Court reversed the decision of the JCC and determined that the E/C must pay both requested attorney's fees.

Takeaway – Florida's statutory cap on attorney's fees does not limit an attorney to collecting only 10% of the benefits secured for the life of a claim after the \$10,000 threshold is reached. Thus, an attorney can get paid indefinitely on a claim.

Echevarria v. Luxor Investments

Case Number 1D14-3540 (3/18/2015)
Lower Tribunal Case(s): 08-033922CMH

Issue – Whether a permanent impairment rating for a compensable injury entitles the injured worker to ongoing palliative treatment, even in the absence of medical testimony establishing a need for treatment?

The First DCA affirmed the JCC's decision denying a follow-up appointment with the Claimant's authorized neurologist on the ground that the E/C met the burden of proving that the compensable injuries were not the major contributing cause (MCC) of the claimant's need for the request. The Claimant's position was that, as a matter of law, his

permanent impairment rating for his compensable injuries entitled him to ongoing palliative treatment, even in the absence of medical testimony establishing a need for treatment. The Court acknowledged that some permanent injuries do not require ongoing active treatment but might require periodic doctor visits to ensure that the compensable injury was not worsening or in need of further evaluations or treatment. The Court noted that here, because the Claimant did not establish that either periodic visits or further evaluations by his authorized doctor were appropriate for his compensable workplace injury, it would affirm the JCC's ruling.

Takeaway – A worker's receipt of permanent impairment rating does not entitle him to ongoing palliative treatment, unless he can show that the treatment is medically necessary for his compensable injury.