

**Tony Joe Leggett v. Barnett Marine, Inc. and Sea Bright Insurance/Enstar U.S. Inc.,**  
Case No. 1D14-4432 (June 4, 2015)

**Facts:**

The Claimant appealed an order of the Judge of Compensation Claims (JCC) denying TTD benefits due to misrepresentations made by the Claimant in violation of Fla. Stat. §§ 440.09 and 440.105.

The Claimant was a marine dock builder who injured his back on 5/9/13. The claim was accepted as compensable, and the E/C authorized medical treatment and began paying TTD benefits. During physical therapy, the Claimant injured his right hip, and was then referred for an orthopedic evaluation on 8/16/13. The E/C contested the evaluation on the grounds that it was not related to the employment.

In 10/2013, three days of surveillance showed the Claimant performing tasks consistent with the construction of a dock. Based on same, the E/C stopped paying TTD benefits as of 12/2/13 and denied the entire claim by asserting a fraud defense under Fla. Stat. §§ 440.09 and 440.105. The Claimant subsequently filed PFBs in 2014 requesting medical benefits and reinstatement of TTD benefits beginning 12/2/13. Thereafter, in his deposition on 7/11/14, the Claimant denied doing any dock work since the date of accident.

A hearing on the pending claims was held, and the JCC reviewed the surveillance. On 9/4/14, the JCC entered an order finding fraud based on the representations made by the Claimant in his deposition; and therefore denied the requested benefits. On rehearing, the Claimant argued that he should have received benefits for the dates before 7/11/14, which was when the misrepresentation was committed which led to the finding of fraud. The JCC denied rehearing by ruling that "Claimant's right to receive compensation benefits ended before his demand for payment of benefits was adjudicated."

**Analysis and Outcome:**

The First DCA noted that the appeal was not challenging the finding of fraud, but rather the Claimant was challenging "the date his forfeiture of benefits became effective" (i.e. either the date of his misrepresentation on 7/11/14, or the date of the JCC's Order on 9/4/14 finding misrepresentation).

The Claimant argued he should have been awarded benefits for the periods pre-dating the misrepresentation (12/2/13-7/11/14). However, the First DCA noted that the Claimant "presumes, without legal or factual support," that he was legally entitled to the medical and

indemnity benefits “allegedly due for periods predating his misrepresentation.” To the contrary, the First DCA wrote that the Claimant never established entitlement to the benefits which the Employer/Carrier was contesting. The JCC actually denied entitlement to those benefits, which were the same benefits that were at issue when he made the misrepresentation.

The Claimant also argued that in every instance where section 440.09(4) is applied, entitlement to benefits ends on the date of the misrepresentation. The First DCA held that the plain text of the statute suggested otherwise. Specifically, § 440.09(4) states “[a]n employee shall not be entitled to compensation or benefits under this chapter if any judge of compensation claims . . . determines that the employee has knowingly or intentionally engaged in any of the acts described in § 440.105.” The First DCA noted that “[t]he words ‘shall not be entitled . . . if’ indicate . . . that where fraud has been found, all contested and unresolved entitlement(s) to benefits under chapter 440 are thereafter resolved against the offending employee.”

### **Take-Away:**

The First DCA held that the JCC “did not err in denying the requested benefits in the PFBs pending before him, regardless of when entitlement to such benefits *would have* accrued had there been no fraud and had the JCC reached the merits of the pending claim, which he was not required to do on account of the finding of fraud.”

In essence, the First DCA agreed with the JCC’s ruling that since the misrepresentation was made on 7/11/14, all rights to receive benefits ended before they were adjudicated on 9/4/14. Since fraud was found, the JCC also was not required to rule on the merits of the pending claims. However, the First DCA specifically noted that they were not addressing “whether a misrepresentation made after the entitlement to benefits was legally established will disqualify an offending employee-claimant from the right to the payment of benefits.” Therefore, it is unclear whether a claimant is entitled to receive payment of benefits if awarded by the JCC, if the claimant later commits a misrepresentation.

### **Felice Kline v. JRD Management and CCMSI**

Case No. 1D15-0562 (June 2, 2015)

### **Facts:**

The Petitioner (injured worker) challenged a denial of her motion to disqualify the Judge of Compensation Claims (JCC), and sought a writ of prohibition directing the JCC to disqualify himself.

In this case, the Petitioner alleged that she “had a reasonable fear that she could not obtain a fair and impartial hearing” due to prior “improper allegations” made by the JCC against her attorney in an unrelated workers’ compensation case. In that unrelated case, the JCC referred the attorney to the Florida Bar and the Department of Financial Services for ethical and criminal violations regarding a claimant-paid fee issue. Specifically, in that unrelated case the JCC found that the Petitioner’s attorney (not his testimony) was “not credible”; that the attorney made “false and misleading written statements”; and that the attorney had a “willful and conscious intent” to overcharge for legal services that were “excessive and arbitrary,” in violation of Fla. Stat. §

440.105(3)(c), which is a first degree misdemeanor. The JCC also called the attorney's actions "unconscionable and abusive" and believed the attorney had acted this way in other cases, and therefore displayed a pattern of behavior that indicated acts of unprofessionalism and criminal deceit.

### **Analysis and Outcome:**

Pursuant to Fla. Admin. Code R. 60Q-6.126(1), [a]ny motion for disqualification of a judge shall be made and determined pursuant to Fla. R. Jud. Admin. 2.330." Pursuant to Fla. R. Jud. Admin. 2.330(d), in order for there to be grounds to disqualify a judge there must be a showing that "the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge." Additionally, Fla. R. Jud. Admin. 2.330(f) requires the judge hearing the motion to disqualify must "determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged." The First DCA cites to case law holding that "disqualification is required where the facts alleged and established, which must be taken as true, would place a reasonably prudent person in fear of not receiving a fair and impartial hearing." See *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332, 1334 (Fla. 1990).

The JCC denied the motion to disqualify based on case law which held that a judge reporting a lawyer's unprofessionalism to the Florida Bar was not legally sufficient for disqualification. However, the First DCA held that the JCC erred in denying the motion to disqualify using the reasonably prudent person standard. Specifically, as the allegations in the motion to disqualify are supposed to be treated as if they were true, the JCC's prior allegations that the attorney himself (not just his testimony in a prior case) was not credible; that he was dishonest; that he committed a crime (if not multiple crimes); and that he was not worthy of belief would place a reasonably prudent person in fear that the JCC was biased and that the Petitioner would not receive a fair and impartial trial or hearing before the JCC. As such, the First DCA granted the petition and issued a Writ of Prohibition disqualifying the JCC in the Petitioner's case.

### **Take-away:**

While motions to disqualify are generally not looked upon well, this case provides some guidelines for when such motions are legally sufficient.

## ***School Board of Lee County and Johns Eastern Company, Inc. v. Leila Huben***

Case No. 1D14-4476 (June 22, 2015)

### **Facts:**

The Employer/Carrier appealed an Order of the Judge of Compensation Claims (JCC) awarding temporary disability benefits for the Claimant's psychiatric injury.

In this case, the Claimant reached MMI from the compensable physical injury on 1/9/14; she was receiving impairment benefits based on a 20% PIR; on 7/3/14 the Claimant obtained an admissible medical opinion that the compensable injury was the MCC of her diagnosis of PTSD (psychiatric injury); and the PTSD rendered her on TTD status. The JCC ultimately awarded

TTD benefits “from 7/3/14 and continuing so long as she remains entitled to same, and subject to the limitations set forth in Section 440.093(3).” The JCC ruled that Fla. Stat. § 440.093(3) “should be construed as a cumulative period limiting the total number of months of benefits such benefits are payable after an injured work reaches physical MMI, and not a consecutive month period.” The Employer/Carrier contended that this interpretation of Section 440.093(3) was improper, and the First DCA agreed.

### **Analysis and Outcome:**

The Employer/Carrier actually appealed the Order of the JCC on four points (as other benefits were awarded besides just the award of TTD); however, only the issue of the award of TTD benefits for the Claimant’s psychiatric injury was reversed and all others were affirmed. The First DCA determined that the award of TTD was subject to Fla. Stat. § 440.093(3) due to the Claimant’s receipt of impairment benefits. The First DCA then ruled that the JCC’s interpretation of the statute was incorrect, and that Fla. Stat. § 440.093(3) sets a “strict deadline after which no TTD benefits are payable on psychiatric injuries,” which is six months to the day after the date of physical MMI.

The actual language of the Section 440.093(3) states that “[s]ubject to the payment of permanent benefits . . ., in no event shall temporary benefits for a compensable mental or nervous injury be paid for more than 6 months after the date of maximum medical improvement for the . . . physical injury or injuries . . .” As such, the First DCA held that TTD benefits were payable from 7/3/14-7/9/14 (which was exactly 6 months after the 1/9/14 physical MMI date); however, the award of TTD benefits past 7/9/14 was reversed as it was over 6 months post physical MMI.

### **Takeaway:**

The First DCA clarifies that the 6 month period provided for in Section 440.093(3) is a consecutive, not cumulative, period post physical MMI. As such, the Employer/Carrier should keep a close eye on the date of physical MMI when psychiatric injuries become compensable, as claimants are not be entitled to indemnity benefits for the psychiatric injury if the disability comes over 6 months post physical MMI.