

**Vancamp v. Decision HR 30, Inc., FWCIGA**

(Fla. 1st DCA 8/19/2015)- Court PCA'd

**Take-Away:**

JCC's correct limitation of the award of Temporary Benefits to 104 weeks. Appellant failed to establish that F.S. 440.15(4) is unconstitutional on its face as applied to him.

**Cruz v. State of Florida**

(Fla. 1st DCA 8/19/2015)

**Facts:**

Claimant appeals Order denying TTD/TPD after 1/5/2014 as JCC found him to have reached overall MMI by 12/31/2013. JCC however awarded Claimant evaluation with gastroenterologist to address acid reflux complaints. On appeal, Claimant argues the JCC erred by finding him at overall MMI and denying disability benefits because like Claimant in Ruiz v. Bellsouth Credit & Collections, 994 So.2d 1220 (Fla. 1st DCA 2008), he still had yet to undergo the evaluation by a gastroenterologist.

**Analysis and Outcome:**

Court finds Ruiz distinguishable from this case and *conclude Claimant can be found to have reached overall MMI notwithstanding the referral for evaluation by a gastroenterologist*--- affirm the JCC's denial of Temporary Benefits. MMI is statutorily defined as the point after which further recovery from or lasting improvement to the injury or disease can no longer be reasonably be anticipated, based upon reasonable medical probability. A claimant being treated for compensable injuries in more than one medical specialty is not at MMI until so deemed by each treating physician in each specialty. Here, injuries Claimant suffered for which he had received and was seeking extended disability benefits, were cardiac and psychiatric--- the authorized doctors treating him for those injuries opined unequivocally that Claimant is at MMI for both--- Having reached MMI from the perspective of each treating specialty, Claimant is no longer entitled to Temporary Benefits. Ruiz is readily distinguishable from this case--- both treating specialists--- the cardiologist and the psychiatrist--- placed Claimant at MMI; no specialty remained outstanding. The fact that Claimant's cardiac medication may have aggravated his pre-existing GERD---hence the need for a gastroenterological evaluation--- did not affect the MMI determination made by either the cardiologist or the psychiatrist. And the existence of a likelihood that Claimant's GERD will be compensable b/c his cardiac medications aggravated his pre-existing acid-reflux does not mean, w/o some supporting medical opinion, that Claimant is not at MMI for the conditions that rendered him temporarily disabled. Claimant had been deemed physically ready to return to work and no doctor testified that Claimant's GERD would, or could, in any way disable him, or that treating the gastric problem could bring about further improvement to his cardiac condition. Unlike the scenario in Ruiz, where several of Claimant's complaints had yet to be evaluated and treated by a variety of

specialists, in this case, there was no MMI determinations pending as to the conditions Claimant was being treated for. Further, cardiologist's MMI determination was not contingent on the outcome of the gastroenterological evaluation. Court has held that an award of medical care and treatment is inconsistent with a denial of temporary benefits for the same period of time. Unlike the scenario in Rosa v. Progressive, 84 So.3d 472 (Fla. 1st DCA 2012), no medical expert opined that the potential treatment of Claimant's GERD could improve Claimant's cardiac condition. Claimant was placed at MMI for both his cardiac and psychiatric conditions and was deemed physically able to return to work, notwithstanding the GERD issue--- consequently, the JCC's concurrent denial of temporary benefits and approval of the gastroenterological evaluation are not inconsistent.

#### **Take-Away**

JCC made a factually and legally correct decision in denying Claimant's request for additional Temporary Benefits where no medical testimony established that the gastroenterology evaluation could provide any improvement in Claimant's cardiac condition; absent such testimony, the JCC correctly found Claimant at overall MMI.

### **Vazquez v. Romero, L&R Structural Corporation Acosta Construction**

(Fla. 1st DFA 8/19/2015)

#### **Facts:**

Petitioner sought writ of prohibition to prevent JCC from exercising jurisdiction over discovery requests that were filed after the PFB was voluntarily dismissed. Court held JCC lacks jurisdiction to issue such an Order and granted Petition. Petitioner voluntarily dismissed the PFB without prejudice and instead sued all three alleged employers in circuit court. Despite the dismissal of the PFB and pending civil lawsuit, Romero and his Carrier filed with JCC papers seeking discovery of Claimant's medical records from a non-party hospital and other discovery related to a claim seeking contribution from another alleged employer- Claimant objected. JCC held a hearing on Claimant's objection and entered an Order holding that the JCC has jurisdiction over Romero's discovery efforts within the work comp arena. Romero and OJCC argue that JCC retains jurisdiction either because Claimant's dismissal of the PFB was without prejudice and a PFB could be refiled or pursuant to F.S. 440.42(4).

#### **Analysis and Outcome:**

Court rejects all of the arguments. *Dismissal of a PFB divests a JCC of jurisdiction--- when all claims asserted through a PFB are dismissed, the JCC loses jurisdiction to address those claims. Such dismissal divests a JCC of jurisdiction to take any further action in the case.* 440.42(4) does not confer jurisdiction on the JCC b/c statute applies only to disputes over carriers' relative coverage responsibilities after underlying liability has been established.