NFN LLP
Neret, Finlay & Nguyen
ATTORNEYS AT LAW

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FINAL ORDERS FROM JUDGES OF COMPENSATION CLAIMS

Misrepresentation is a Sin, Unless You Confess!

Dion Mapp v. GL Staffing Services/Amerisure Insurance - OJCC Case No. 15-026167MGK, August 31, 2017

Judge of Compensation Claims rejected misrepresentation defense and found that the E/C/SA failed to prove the claimant knowingly or intentionally misrepresented his prior history in violation of Section 440.105 of the Florida Statutes. The E/C/SA argued that claimant, during his deposition, failed to reveal his prior back injury and motor vehicle accident where he injured his low back. The E/C/SA also argued that claimant failed to disclose to his treating physicians after the industrial accident of a prior history of back pain and a prior motor vehicle accident. At the final hearing claimant testified about his troubled past which ... *(cont. on page 2)*.

1 **FINAL ORDERS FROM JUDGES OF COMPENSATION CLAIMS**

2 **FIRST DISTRICT COURT OF APPEALS CASES**

3 **UPDATES FROM NERET, FINLAY & NGUYEN**

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Judge of Compensation Claims rejected misrepresentation defense in *Dion Mapp v. GL Staffing Services / Amerisure Insurance*

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Properly Divorce Your Claimant in 120 Days...

The First District Court of Appeal recently issued an Opinion in *Mathis v. Broward County School Board.*

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included history of incarceration and use of drugs. Claimant was placed in halfway house and had found employment after his release from prison. In his deposition in February 2016 he denied receiving prior treatment to his lower back. He testified that he had been involved in a motor vehicle accident about five years before and was taken to the hospital to have his whole body checked out. In his deposition, he denied being involved in any other motor vehicle accidents. In 2002, however, claimant was a passenger in a motor vehicle accident in which he claimed injures to his neck and back, hired an attorney, gave a recorded statement, and received follow up care.

At the final hearing, the claimant told the Judge he was not proud of his past history, that he in the past used drugs and that he did not remember the 2002 motor vehicle accident. The Judge found the claimant credible and found that the claimant was making every effort to turn his life around and that he was particularly proud that he had recently won custody of his children. Judge rejected the misrepresentation defense.

NFN'S TAKE

- Repent you sinner, confess and you shall be forgiven.
- Have alternative defenses in case the Judge surprises you with ruling.

If Anyone Objects to The Attachment of These Medical Bills, Speak Now or Forever Hold Your Piace

Ronald Huelsman v. W.F. Davis Marine Construction, OJCC Case No. 16-001455JW, August 29, 2017

The E/C/SA's failure to object in Pre-Trial Stipulation to the admissibility of medical bills constitutes a waiver of their admissibility. Judges are reluctant to exclude evidence as such action is a drastic remedy.

NFN'S TAKE

- Object in Pre-Trial Stipulation to Petitions for Benefits with attachments because the attachment may not only be a bill but a medical record or a DWC-25.
- Object in the Pre-Trial to any medical record on basis of authentication, hearsay and any other possible basis.

If E/C/SA Agrees/Stipulates to Its Responsibility for Medical Bills, JCC Has No Subject

Betty Sweezer v. Allegis Group, Inc./ESIS WC Claims, OJCC Case No. 17-003753TWS, August 31, 2017

Judge held that AHCA and not JCC has exclusive jurisdiction over reimbursement disputes as to payment of medical bills. If E/C/SA agrees that bills are from authorized provider for compensable conditions, any dispute for payment is outside the jurisdiction of the JCC.

FIRST DISTRICT COURT OF APPEAL

Do You Need Expert Testimony to Agree Attorney Fee Should Be Limited Using The Present Value of Benefits Secured?

Circle-K Stores, Inc. v. Emerita Flores-Orellana Case No. 1D16-1715, August 21, 2017

The answer is Yes. The Judge of Compensation Claims awarded an attorney fee based using a 4% discount factor of the present value of the benefits obtained. Testimony regarding present value and discount factor was through attorneys and not an economist. In this case, claimant had an attorney who also hired a consulting attorney to help regarding attorney fee hearing and other matters. In the Verified Petition for Benefits, the claimant's attorney sought a statutory attorney fee based on value of the benefits obtained. The JCC concluded that because the claimant's attorney sought a statutory fee on the value of the benefits obtained rather than an hourly fee, the fees sought by the consulting attorney had to be paid out of the award of the statutory fee rather than a separate hourly fee.

The First District Court of Appeal reversed and remanded the case to the JCC for a re-calculation of the fee amount because the JCC erred by calculating the statutory fee using a discount factor outside the record. Furthermore, the First District Court of Appeal affirmed the finding of the JCC that consulting attorney had to be paid out of the award of the statutory fee instead of a separate hourly rate.

The decision is not final until the 15 days for Motion for Rehearing expire.

NFN'S TAKE

If E/C/SA is going to argue statutory fee based on benefits secured using a discount factor, either stipulate to a discount factor with claimant's attorney or have evidence from an economist regarding the discount factor.

A WAITING PERIOD CASE?

The First District Court of Appeal recently issued an Opinion in Sinclair v. Manorcare Health Services-Dunedin Case No. 1D16-4975 (August 7, 2017). The First District Court of Appeal held that JCC erred in awarding TTD benefits during the first seven days of the disability period. Section 440.12(1) of the Florida Statues provides that compensation is not allowed for the first seven days of disability unless the injure results in more than 21 day of disability. The seven days exemption applies to the first seven days of the disability period and not necessarily the first seven days after an injury.

The decision is not final until the 15 days for Motion for Rehearing expire.

Properly Divorce Your Claimant in 120 days or Else

What are you required to give a claimant during the 120-day pay-and-investigate period?

Mathis v. Broward County School Board
Case No. 1D16-3286, August 14, 2017

The First District Court of Appeal recently issued an Opinion in Mathis v. Broward County School Board Case No. 1D16-3286. In that case, the claimant, who is a diabetic, reported that on March 4, 2015 a nail went into her right shoe causing her foot to be swollen and painful. Claimant was referred to a physician on March 5, 2015, and E/C/SA invoked the 120-day pay-and-investigate rule, also asserted causation and other defenses, and continued paying claimant her full salary in lieu of temporary compensation benefits. By March 9, 2015, the claimant developed an infection to her foot and the authorized treating workers' compensation provider referred her to a consult through a hospital emergency room for IV treatment. On March 9, the claimant went to the emergency room and underwent surgery on the abscess on March 11 with a subsequent wound closure on March 15 with a discharge date of March 17. The hospital bill was $116,000.

The Notice of Denial was filed on March 17, but the E/C/SA argued that the decision to deny the claim was made on March 5. The physician notes indicated that claimant already had abscess on her foot on March 5, the day after the alleged incident. The opinion of the physician was that a staph infection takes more than one day to develop. The adjuster received the written referral recommending claimant to go to hospital within ten days prior to issuing the Notice of Denial on March 17, 2017. The adjuster did not authorize the hospitalization and did not find out about the hospitalization until March 10. In addition, neither the authorized treating provider nor the hospital requested prior authorization for the treatment at the hospital.

QUESTIONS ADDRESSED

Was the E/C/SA responsible for payment of the hospitalization which occurred before the denial of compensability?

What is point in which benefits should cease under the 120 day rule, the date the decision is made to deny compensability or the day when the Notice of Denial is filed?

Does the E/C/SA have any defenses within the 120 day pay and investigate period or is it bound to pay all indemnity and medical benefits without any defenses?

NFN'S TAKE

- Under the 120 day pay and investigate rule all benefits (indemnity and medicals) must be made but with the caveat below in #5.
- The 120 day rule must be invoked in writing by the E/C/SA
- The 120 day rule requires that the E/C/SA advise the employee of claim acceptance or denial. An internal decision to deny the claim without written notification to the claimant is not enough.
- E/C/SA could be responsible for payment of the entire hospital bill if claimant can show that hospitalization was an emergency per Section 395.002 of the Florida Statutes.
- Even though case is accepted under the 120 day rule, E/C/SA still has defenses:
  - The E/C/SA can still argue that hospital bills should not be paid because there was no request for prior authorization of the hospitalization as required by Section 440.13(3)(c).
  - The E/C/SA is entitled to a ten day period to authorize the hospitalization per Section 440.13(i) unless emergency care is required.

HOLDING: The First District Court of Appeal held that the E/C/SA would be responsible for payment of the entire hospital bill through the date of the Notice of Denial if the claimant can show that hospitalization was emergency care.

STAY TUNED FOR UPCOMING NEWS ABOUT THE LAW OFFICES OF NERET, FINLAY & NGUYEN

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