

SEP 22 2008

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

CITY OF LAKELAND and THE  
CLAIMS CENTER,

Appellants,

v.

JEFF CLAYTON,

Appellee.

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NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D07-5993

CORRECTED COPY  
RL 9-19-08

Opinion filed September 10, 2008.

An appeal from an order of the Judge of Compensation Claims.  
Mark H. Hofstad, Judge.

Dennis A. Ross and Barbi L. Feldman of Ross Vecchio, P.A., Lakeland, for  
Appellants.

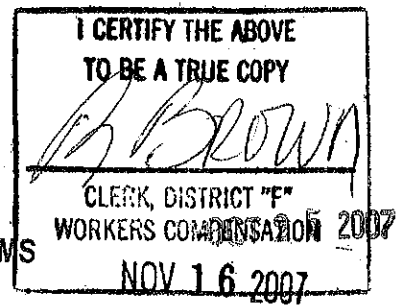
Geoffrey Bichler and Paul A. Kelley of Bichler & Kelley, Winter Park, for Appellee.

PER CURIAM.

AFFIRMED.

DAVIS, PADOVANO, and ROBERTS, JJ., CONCUR.

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
LAKELAND DISTRICT



Jeff Clayton,

Claimant,

vs.

Lakeland Police Department/Claims Center,

Employer/Carrier.

OJCC CASE NO: **06-027156MHH**

DATE OF ACCIDENT: 05/28/06

JUDGE: Mark H. Hofstad

**FINAL COMPENSATION ORDER**

Pursuant to the Notice of Hearing, this matter came on to be heard before the undersigned Judge of Compensation Claims in Lakeland, Polk County, Florida on Friday, August 31, 2007, at 11:00 a.m. Present at the trial and representing the Claimant, Jeffrey Clayton, were Paul A. Kelley, Esquire and Geoffrey Bichler, Esquire of Winter Park. Present at the trial and representing the City of Lakeland, was Karen Lukhaub, Risk Manager, and providing legal representation for the Employer/Carrier, the City of Lakeland and The Claims Center (collectively, Employer/Carrier or E/C) were Dennis Ross, Esquire, Virginia C. Carter, Esquire, and Barbi Feldman, Esquire, of Lakeland.

**The parties waived the requirement that the court prepare an order within thirty days of trial.**

The issues addressed at trial were those raised in the Petition for Benefits filed on September 15, 2006. Subsequent to the trial, by letter dated Wednesday, October 10, 2007, the undersigned instructed, Paul A. Kelley, the attorney for the Employee/Claimant, to prepare the following Order:

At the pre-trial conference or prior to this matter being submitted for determination, the parties, by counsel, arrived at the following **STIPULATIONS**:

1. The Judge of Compensation Claims has jurisdiction over the parties and the subject matter, and venue is proper in Polk County, the Lakeland District;
2. There was an employer/employee relationship on the date of accident, May 28, 2006;
3. The Employer had either Workers' Compensation insurance coverage, or a qualified self-

insurance program, in place on the date of accident;

4. The accident and injuries were never accepted as compensable by the Employer/Carrier;
5. There was timely notice of the pre-trial conference and the trial/final hearing;
6. The date of the accident is May 28, 2006;
7. The place of accident/venue is Polk County;
8. There was timely notice of the accident, injury or occupational disease;
9. That if benefits under §440.13, Florida Statutes (medicals) are determined to be due or stipulated due herein, the Parties agree that the exact amounts payable to health care providers will be handled administratively and medical bills need not be placed into evidence at trial;
10. No medical treatment has been authorized;
11. That the Petition for Benefits was filed with the Division on September 15, 2006; and
12. That the Notice of Denial was filed June 7, 2006.

In addition to the more typical stipulations of the parties, the parties have **ADDITIONALLY STIPULATED** that:

1. Penalties and interest are not at issue as there was no claim filed for indemnity benefits.

**As framed by the parties, the ISSUES to be adjudicated at this time are limited to the following:**

1. Determination of compensability of the Claimant's essential hypertension/heart disease conditions, pursuant to Florida Statute §112.18;
2. Authorization for evaluation and treatment with a Board Certified Cardiologist to treat the hypertension/heart disease conditions; and
3. Costs and attorney's fees to be paid by the Employer/Carrier, pursuant to Florida Statute §440.34 and §440.32.

**The Employer/Carrier has asserted the following DEFENSES:**

1. Claim has been denied in its entirety, as condition does not meet criteria resulting in

temporary partial disability or death per F.S. §112.18;

2. On alleged date of accident, Claimant was not diagnosed with a condition rendering him disabled as a result of his employment as a police officer;

3. The Claimant's hypertension is pre-existing the date of accident and was stable on May 28, 2006, or in the alternative, was not the major contributing cause of the need for hospitalization;

4. The Claimant had pre-existing chest pains of unclear etiology;

5. During the Claimant's hospitalization, Claimant underwent diagnostic testing only;

6. No definitive diagnosis of the Claimant's condition has been rendered;

7. The presumption of the heart and lung statute 112.18 does not apply. While the Claimant's pre-employment physical reveals that his blood pressure reading of 134/84 was within acceptable limits for employment, nonetheless, the Claimant had pre-hypertension upon employment.

8. No causal relationship between the Claimant's condition and his employment as a police officer.

9. The major contributing cause of Claimant's condition is personal in nature and unrelated to Claimant's employment as a police officer.

10. Florida Statute §112.18 creates an unequal application of laws as the statute creates a protected class that should not be merely because of a job.

11. Florida Statute §112.18 has a competent evidence standard. The Supreme Court's interpretation has a clear and convincing standard which goes against the intent of the legislature and precludes the Employer/Carrier's ability to prove that the Claimant's condition is unrelated.

12. The Statute 112.18 is unconstitutional as written and interpreted by the court as it denies the Employer/Carrier's right to due process.

13. No entitlement to penalties, interest, costs and attorney's fees; and

14. The Employer/Carrier objects to the Court's consideration of any issues that have not been properly raised through a Petition for Benefits or mediated.

2007, together with attached exhibits;

Employer/Carrier's Exhibit #4: The deposition of Judy Character, dated March 6, 2007, together with attached exhibits, admitted for factual and historical purposes only;

Employer/Carrier's Exhibit #5: The deposition of Kathy Gamble, dated February 8, 2007, together with attached exhibits, admitted for factual and historical purposes only; and

Employer/Carrier's 10 page Composite Exhibit #6: Notice of Denial dated June 7, 2006; Response to Petition for Benefits as filed with DOAH on September 27, 2006; and the Payout Ledger.

In making its **FINDINGS OF FACT AND CONCLUSIONS OF LAW** in this claim, the court has carefully considered and weighed all of the testimony and evidence presented at final hearing, including all live and deposition testimony, as well as exhibits, and has resolved any and all conflicts therein. The court has also carefully observed the candor and demeanor of the Claimant, Jeffrey Clayton, who was the only witness to testify live at trial and has resolved any conflicts in the testimony and the evidence. In arriving at these findings of fact and conclusions of law, this court has further rejected all of the evidence and inferences which may be inconsistent with these findings and conclusions.

After having carefully considered the testimony at trial, as well as all of the evidence, the statute, and applicable case law, the undersigned Judge of Compensation Claims makes the following determinations:

#### **FINDINGS OF FACT**

1. The court accepts the stipulations of the parties as findings of fact and incorporate them by reference as if set out at length herein.

2. The Claimant, Jeffrey Clayton, was 50 years old on the date of the Final Hearing. Officer Clayton was hired by the City of Lakeland on October 2, 1989. Prior to initiating his employment with the City of Lakeland, the Claimant underwent a pre-employment physical on August 8, 1989. His blood pressure reading was 134/84, and an EKG was also performed. The findings upon examination were felt to be within normal limits based on the standards in effect at the time of the exam. The Claimant was cleared for

employment as a Police Officer with the City of Lakeland. Mr. Clayton continued his employment as a road patrol officer with the Employer, working on shift from 6:30 a.m. to 6:30 p.m. in the southeastern zone of the City.

Over the course of his career as a law enforcement officer, the Claimant developed essential hypertension which was initially diagnosed around 1995, and resulted in mild left ventricular hypertrophy. However, Mr. Clayton suffered no disability for the hypertensive condition until 2006. Following treatment with Dr. Stamper, the Claimant followed with Dr. Ramos for his hypertension. Officer Clayton treated with Dr. V.J. Vailoces, as primary care physician, who continued to medicate him for the hypertensive condition, similar to the treatment previously provided by Dr. Anderson and Dr. Stamper. Subsequently he experienced periodic light-headedness and skipping heart beats, but never associated with chest pain or tightness. During one of these events he presented to the emergency room where his blood pressure was found to be 200/118, and he was told to take another blood pressure pill. This court makes no finding regarding disability relating to that incident as it is not at issue.

On Sunday, May 28, 2006, Officer Clayton was in his patrol vehicle doing paperwork when he experienced sudden onset of chest pressure, light-headedness and dizziness. Timely notification was provided to his supervisor, Sgt. Marshall Lord, by the Claimant before he drove himself to the hospital, believing he was having a heart attack. Sgt. Lord completed the incident report on the injury and contacted the City Nurse, Barbara Jordan. The call to Ms. Jordan was made on May 28, 2006, notifying her of Officer Clayton's admission to Lakeland Regional Medical Center for chest tightness and light headedness. The Claimant also reported the hospitalization the same day to Ms. Jordan by phone.

The Claimant was hospitalized at LRMC for three days with complaints including near syncopal episodes, palpitations, chest pressure/tightness, light-headedness, dizziness and skipped beats. Upon admission, his initial blood pressure was elevated at 146/89, considering he was already on blood pressure medications. Extensive cardiovascular workup, including chest x-rays, EKG, echocardiogram, blood work, and a nuclear stress test were completed. During the nuclear stress on May 30, 2006, his blood pressure

was 220/90 and considered to be a high abnormal hypertensive response to the exercise, with a decreased exercise capacity. The Myoview Chemical Stress test revealed possible partial septal ischemia with a borderline ejection fraction of 49%. An echocardiogram performed on May 30, 2006, revealed mild left ventricular hypertrophy, and the nuclear images could not entirely rule out low-grade septal ischemia. He was discharged on May 30, 2006.

He was ultimately released to return to work as of June 2, 2006. His claim was denied by the Employer on June 7, 2006. The City Nurse, Barbara Jordan confirmed having the Claimant's pre-employment physical, which had been, accepted as within normal limits. She also testified to his hospitalization for three days for severe essential hypertension, arrhythmias suggesting premature atrial contractures, and chest pain syndrome. At the time of the denial, she did not have the records from the hospital.

The Employer/Servicing Agent maintained their denial and has provided no benefits under Workers' Compensation to the Claimant. The Claimant filed a Petition for Benefits on September 15, 2006, requesting compensability of the hypertension and heart disease conditions pursuant to Florida Statute §112.18; medical care and treatment with a board certified cardiologist for these conditions; and penalties, interest, costs and attorneys' fees pursuant to Florida Statutes §440.32 and §440.34.

3. The court finds that the Claimant, Jeffrey Clayton, is a law enforcement officer and therefore one of the members of the class eligible for the benefit of the presumption contained within Florida Statutes §112.18. The uncontroverted testimony is that Mr. Clayton was hired by the City of Lakeland as a law enforcement officer and was assigned to work road patrol. It was in that capacity that he was working on the date of accident.

4. The court finds that Officer Clayton developed cardiac conditions which are contemplated and covered by the Heart/Lung bill as found in Florida Statutes §112.18. More specifically, the court finds that the various experts have diagnosed the Claimant with hypertensive heart disease, non-obstructive stenosis (calcified plaque in one of the Claimant's major arteries often referred to as coronary artery disease), and left ventricular hypertrophy (a thickening of the wall of the main chamber of the heart, considered hypertensive

heart disease), and palpitations. Based on the expert testimony, the court finds that these conditions constitute heart disease.

The Employer/Carrier obtained an Independent Medical Examination with Dr. John Canto on February 7, 2007. He noted initial blood pressure readings of 150/80, which were elevated as Mr. Clayton was already on blood pressure medications at the time. Dr. Canto found evidence of mild left ventricular hypertrophy as a result of his uncontrolled hypertension. Dr. Canto also requested multiple diagnostic procedures including a 64 slice CT scan which revealed a 40 to 50% occlusion of one artery and early stages of plugging; Doppler Studies of the kidneys which ruled out renal artery stenosis; and Lab Studies which revealed dislipidemia and possible pre-diabetes. Ultimately, Dr. Canto diagnosed the Claimant with essential hypertension with mild left ventricular hypertrophy (hypertensive heart disease), palpitations, obesity, pre-diabetes, dislipidemia, and coronary artery/heart disease. Dr. Canto testified he is not able to state, within a reasonable degree of medical probability, the major contributing cause of the essential hypertension or coronary artery disease. He did indicate the likely cause for the left ventricular hypertrophy was the uncontrolled hypertension. Although the Claimant had some "risk factors" for developing these conditions, specifically, family history, pre-diabetes, and obesity, the doctor was not able to identify the specific cause of the Claimant's cardiac conditions. Dr. Canto did state the hypertension was likely the cause of the left ventricular hypertrophy. However, Dr. Canto did testify that he could not rule out Mr. Clayton's employment stress as a contributing factor to the development of these conditions.

Dr. Patrick Mathias performed an Independent Medical Examination on behalf of the Claimant on December 19, 2006, and diagnosed him essential hypertension with left ventricular hypertrophy and coronary artery disease. Dr. Mathias also indicated it was scientifically impossible to determine the major contributing cause of these conditions or to prioritize or rank the level of contribution among the risk factors. However, it was also Dr. Mathias' opinion that the Claimant's work as a law enforcement officer could be an aggravating or contributing factor for developing these conditions.

Dr. Canto also testified there was no way to scientifically rank or prioritize work related versus non-



work-related risk factors. He stated there was no medical literature on this to his knowledge.

In this case, the opinions of the Claimant's expert, Dr. Patrick Mathias, and the Employer/Carrier's expert, Dr. John Canto, were in agreement in many areas, but likewise differed on many points. To the extent that the opinions were consistent, the court accepts that testimony from each physician. However, wherever the testimony may be in conflict, the court accepts the testimony and opinions of Dr. Patrick Mathias over that of Dr. John Canto as being more consistent with logic and reason when viewed in light of the totality of the medical evidence and facts of this claim.

Regarding the essential hypertension, both IME physicians agree that, by definition, there is no way to determine the "major contributing cause of the condition". Essential hypertension by its nature is of unknown etiology.

In his deposition, Dr. Mathias likewise testified that there is no way to scientifically or objectively determine the major contributing cause of the Claimant's development of coronary artery disease. However, Dr. Mathias testified that the Claimant's work as a law enforcement officer would have been an aggravating or contributing factor regarding his hypertension and heart disease. According to his testimony, this was based on his understanding of studies that the incidence of hypertension and heart diseases is higher in shift workers and first responders. Dr. Canto could not rule this out, and had not reviewed these studies. Both Dr. Mathias and Dr. Canto testified that there is a difference between a "risk factor" and a "cause", and that with hypertension and heart disease, physicians are able to identify potential risk factors, but cannot pinpoint the actual cause of an individual's hypertension or heart disease.

Dr. Mathias clearly testified that the Claimant's employment, which includes shift work and adrenal responses, was a contributing factor to the Claimant's development of coronary disease. Dr. Mathias was clear in his opinion that it is not possible to determine which risk factor caused the Claimant's coronary disease or hypertension.

The court accepts the opinion testimony of Dr. Mathias with regard to the aggravating/contributing factor that the Claimant's employment as a law enforcement officer would have on the development of

hypertension and heart disease conditions, and specifically reject the opinions of Dr. Canto where they conflict with the opinions of Dr. Mathias.

5. The court finds that the Claimant passed a pre-employment physical upon entering into service as a law enforcement officer with the City of Lakeland Police Department. Although Dr. Canto indicated the Claimant's blood pressure readings on pre-employment physical may be considered to be "pre-hypertension" under today's standards, he testified on pages 37 and 38 of his May 9, 2007 deposition, that the blood pressure reading was normal in 1998, and that, even if the reading was considered slightly elevated, one elevated blood pressure reading is not evidence of hypertension.

Dr. Mathias testified that "prehypertensive" is not a disease condition. Further, he testified there is no entry of prehypertension in ICD IX, which is the book of codes for all diagnosis. Textbooks for cardiology do not mention prehypertension, and the JNC VII suggests that prehypertension does not need treatment. The court accepts the testimony of Dr. Mathias over that of Dr. Canto where ever they may be in conflict, again noting that Dr. Mathias is certified as a hypertension specialist by the American Society of Hypertension, whereas Dr. Canto is not so certified.

Both IME physicians, Dr. Patrick Mathias and Dr. John Cantos testified there was no evidence of hypertension or heart disease on the pre-employment physical. Therefore, this court finds that the pre-employment physical failed to reveal any evidence of the claimed conditions, more specifically, hypertension or heart disease.

The court finds the testimony of both Dr. Mathias and Dr. Canto to be uncontroverted that Officer Clayton successfully passed a pre-employment physical that failed to reveal any evidence of the claimed conditions. The court's review of the medical records provides no evidence of the hypertension or heart disease prior to 1995, at least 6 years after he began employment with the City of Lakeland. This finding is supported by the medical testimony of both Dr. Mathias and Dr. Canto.

6. Based on the totality of the medical evidence, the court finds that Mr. Clayton sustained a total or partial disability as a result of both the hypertension and heart disease conditions. The Claimant

presented to the hospital with complaints of chest pressure/tightness, shortness of breath, fatigue, light-headedness, dizziness, palpitations, "skipped beats", and nausea. According to the expert physicians, as well as the Nurse for the City of Lakeland, Barbara Jordan, the Claimant was hospitalized for treatment for severe uncontrolled essential hypertension, arrhythmias, atypical chest pain syndrome, unstable angina, and heart disease. As a result of testing and treatment for these cardiac conditions, Officer Clayton utilized three days of accumulated sick leave during his hospitalization.

The Claimant was then told to report to Dr. Vailoces on June 1, 2006 for a fitness for duty examination before returning to work. He was provided with a release to return to work, regular duty, as of June 2, 2006.

The court finds the Claimant's testimony to be credible and consistent with the totality of all other evidence presented in this regard.

Nurse Jordan confirmed the incident reports were completed on May 28, 2006 and received in the City Nurse's office on June 1, 2006. She also testified that Officer Clayton was treated for three days in the hospital for severe essential hypertension, arrhythmias suggesting premature atrial contractures, chest pain syndrome, hypercholesterol syndrome (on Tricor), and enzymes negative for myocardial infarction. Nurse Jordan was not sure why the claim was denied on June 7, 2006.

The court finds the Claimant missed work for at least three days while being hospitalized and then another day before being released to return to work on June 2, 2006. The court also finds that during this period he was medically incapacitated from performing his useful and efficient work as a law enforcement officer. Further, he was unable to earn wages in his usual and customary fashion during this period, and due to his incapacity to earn these wages, he had to use sick time that he had accumulated as a law enforcement officer. He was not paid his regular salary or wages by the Employer.

This court finds this to be consistent with the District Court of Appeals En Banc opinion in *City of Port Orange v. Sedacca*, 2007.

7. Based on the foregoing, this court finds that the Claimant has met the four pronged test for

entitlement to the presumption contained within Florida Statutes §112.18. Pursuant to the statute and case law, the Claimant must show four elements before the burden of proof shifts to the Employer:

- 1) That he is a member of the protected class (ie. law enforcement officer, firefighter, or correctional officer);
- 2) That he developed a covered condition (ie. hypertension, heart disease, or tuberculosis);
- 3) That he underwent a pre-employment physical that failed to reveal evidence of the claimed condition(s) (ie. no evidence of hypertension or heart disease in this claim); and
- 4) That the covered conditions resulted in temporary, partial, or permanent disability or death (temporary or permanent incapacitation from performing his duties as a law enforcement officer).

In the case at bar, the Claimant has met each of these elements as delineated in the court's findings above, therefore, the burden of proof shifts to the Employer/Servicing Agent to overcome that presumption by competent substantial evidence.

This case involved hypertension and coronary artery disease of a law enforcement officer. Under these facts, Florida Statutes §112.18, indicates that a law enforcement officer's hypertension or heart disease is presumed to have been the result of his or her employment unless alternate causation can be demonstrated by competent evidence.

8. The court finds that the Claimant has entitlement to the presumption in that the Claimant is a law enforcement officer, has developed heart disease and hypertension, underwent a pre-employment physical that failed to reveal any evidence of heart disease or hypertension, and these conditions clearly resulted in temporary disability.

The uncontroverted evidence in this matter, clearly demonstrates that Mr. Clayton met each requirement for the presumption of work relatedness to become operative. The statute, therefore, casts on the employer the burden of proof in establishing that the disease was caused by a "non-occupationally related agent" (*Caldwell* at 441).

Further, the medical and factual evidence before this court regarding the compensability of Mr. Clayton's claim is supportive of the presumption and is in favor of the Claimant. The court finds the Claimant has met each element for the presumption of work relatedness as required in the "Heart/Lung Bill." The court therefore finds the burden of proof rests with the City of Lakeland.

In making its determinations, this court has balanced the weight of the medical evidence, as outlined in *Caldwell*, to determine whether the presumption has been overcome. This court finds the evidence supports the presumption, or, at worst is balanced, and has not been overcome by the Employer/Carrier, and therefore, finds that the Claimant, Jeffrey Clayton prevails on the merits of this claim.

9. This court finds the Employer/Carrier has not provided sufficient evidence to overcome the presumption that the Claimant's heart disease is unrelated to his employment.

The court recognizes the findings of the Florida Supreme Court in *Caldwell v Division of Retirement*, 372 So.2d 4378. In that decision, the Florida Supreme Court stated on page four-hundred forty one (441):

The statutory presumption is the expression of a strong public policy which does not vanish when the opposing party submits evidence. Where the evidence is conflicting, the quantum of proof is balanced and the presumption should prevail.

The court finds that the Employer/Carrier has not shown by competent evidence that the Claimant's coronary disease is not work related given the presumed fact that it is. Therefore, the presumption has not been overcome.

Further, this court finds the Employer/Carrier did not present "competent, substantial evidence that convinces the undersigned that the disease was caused by some non-work-related factor" as stated in *City of Tarpon Springs v Vaporis*, (Fla. 1st DCA 2007). While the Employer/Carrier did present evidence from Dr. Canto regarding risk factors, this court finds that it was not sufficient to overcome the statutory presumption afforded under Florida Statute §112.18. The testimony of Dr. Canto falls short of the competent, substantial evidence standard required to overcome the presumption. Furthermore, the testimony of Dr. Canto must be balanced against that of Dr. Mathias. Since it is clear that the testimony of Dr. Mathias supports the

presumption, the Claimant must prevail under *Caldwell*.

Here, the medical evidence presented by the Employer/Service Agent, as to causation does not provide either competent or clear and convincing evidence to overcome the presumption. Dr. Mathias specifically testified, and Dr. Cantos could not rule out, stress at work and increased adrenal levels as being a contributing factor in the development of the hypertension or heart disease. Accordingly, the Claimant submits that the burden for the City in this regard is one of clear and convincing evidence. Following the analysis in *Caldwell*, the Employer/Service Agent must demonstrate, in situations such as this, clear and convincing evidence that some other factor was the cause of the Claimant's condition and need for treatment.

Their strongest evidence is Dr. Canto, their IME. However, even Dr. Canto's testimony falls short of providing evidence sufficient enough to rebut the presumption. Dr. Canto agreed on page 39 of his May 9, 2007 deposition that he did "not know the exact etiology of his essential hypertension or heart disease." He said "that's 'inherent' in the definition of 'essential', yes." Further, on page 44 of that same deposition, he testified that,

in the case of hypertension, there is not a smoking gun that you can say caused anything. It's just a multitude of various factors that may have contributed to the medical condition. There is no guarantee . . .

While Dr. Canto likely attributed some of the Claimant's conditions to being from non-work related risk factors, he could not state with any medical certainty as to what the specific cause of the Claimant's hypertension or heart disease was. This is precisely the type of situation that the presumption is intended to answer. The *Caldwell* Court specifically recognized that the presumption relieves the Claimant:

. . . from the necessity of proving an occupational causation of heart disease. The Statute cast on the employer the burden of persuading the trier of fact that the disease was caused by a non-occupationally related agent. The presumption would be meaningless if the only evidence necessary to overcome it is evidence that there has been no specific occupationally related event that caused the disease. To rebut the statutory presumption, it is necessary that the Commission show that the disease causing disability or death was caused by a specific, non-work related event or exposure (*Caldwell* at 441).

Neither physician could determine the precise etiology of the essential hypertension, as it is, by

definition, "of unknown etiology." Both physicians testified that the hypertension contributed to the development of the left ventricular hypertrophy and heart disease. Dr. Mathias further indicated that stress, shift work and adrenal increases can be considered a contributing factor in the development of these conditions.

Further, neither physician could pinpoint the onset date of the hypertension except to say it was initially diagnosed around 1995. However, it was clear that there was no evidence that any of these cardiac conditions pre-existed his employment with the City of Lakeland.

This court therefore finds the presumption contained in Florida Statute 112.18 to applicable and rule that the Claimant's cardiovascular conditions are compensable, since the City has not supplied clear and convincing or competent, substantial evidence to overcome the presumption.

10. The Employer/Carrier has raised a defense that the statute in question is not constitutional. This court does not have authority or jurisdiction to make findings on the constitutionality of a statute.

11. This court finds that the petition for a cardiologist to treat the hypertension and heart disease conditions is reasonable, and the treatment is medically necessary and appropriate, based on the testimony of the expert physicians. Therefore, said treatment is granted.

12. This court further finds that, as this claim is compensable, Workers' Compensation benefits should have been timely provided to the Claimant.

#### **CONCLUSIONS OF LAW**

**WHEREFORE**, based upon the foregoing findings of fact, the following represent the conclusions of law for these proceedings, and therefore it is the Order of the undersigned Judge of Compensation Claims that:

1. The Claimant sustained a compensable industrial accident, as defined in Chapter 440 of the Florida Statutes, on or about May 28, 2006, and is entitled to certain benefits as provided by law.

2. The Claimant's hypertension with left ventricular hypertrophy, coronary artery disease, and cardiovascular conditions, are compensable pursuant to Florida Statutes §112.18 in conjunction with Chapter

440.

3. The Employer/Carrier shall authorize a board certified cardiologist to provide the Claimant with continuing care and treatment for these conditions.

4. The Employer/Carrier is responsible for the cost of the medical care and treatment provided to the Claimant relative to his cardiac conditions. However, this court does not have jurisdiction or authority to require the Employer/Carrier to reimburse the health care providers. This court can attribute responsibility but has no jurisdiction to require reimbursement to a third party.

5. The Employer/Carrier shall provide ongoing appropriate benefits related to these compensable conditions.

6. The Employer/Carrier shall reimburse the Claimant for reasonable costs incurred in preparation for these proceedings.

7. The Employer/Carrier shall pay a reasonable attorney's fee relative to the benefits secured.

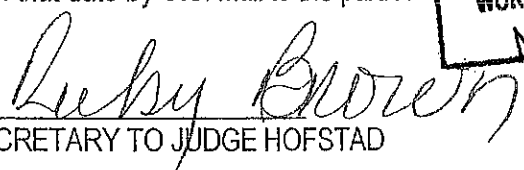
8. Jurisdiction is hereby reserved to determine the amount of attorney's fees and costs due the Claimant's Attorney from the Employer/Carrier, should the parties be unable to reach agreement thereon.

**DONE AND ORDERED** in Chambers in Lakeland, Polk County, Florida.

  
HONORABLE MARK H. HOFSTAD  
JUDGE OF COMPENSATION CLAIMS  
LAKELAND DISTRICT

OCT 23 2007

I HEREBY CERTIFY that the foregoing Order was entered on this \_\_\_\_ day of October, 2007, and that a conformed copy was sent on that date by U.S. Mail to the parties at their addresses of record.

  
SECRETARY TO JUDGE HOFSTAD

OCT 23 2007

