STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SARASOTA DISTRICT OFFICE

Eric P. Struble,	)	
Employee/Claimant,	)	
vs.	)	OJCC Case No. 06-028188DBB
Manatee County Sheriff's Department,	)	Accident date: 7/26/2002
Employer,	)	
and	)	
Unisource Administrators, Inc.,	)	
Carrier/Servicing Agent.	)	

FINAL COMPENSATION ORDER

This cause was heard before the undersigned Judge of Compensation Claims at Sarasota, Manatee County, Florida on December 10, 2007 upon the claimant's claims for determination of compensability of claim, authorization of medical care for hypertension/heart disease with a board certified cardiologist or other qualified physician; and costs and attorney's fees. The petition for benefits was filed on June 4, 2007. Mediation occurred on September 25, 2007, and the parties' pretrial compliance questionnaire was filed on October 8, 2007. Tonya A. Oliver, Esquire was present on behalf of the claimant. Daniel J. DeMay, Esquire, was present on behalf of the

employer/servicing agent (E/SA).

The E/SA defended on the basis that: no compensable accident, injury or condition; no medical benefits are due or owing; no application of the statutory presumption under §112.18, Fla. Stat., inasmuch as claimant fails to meet the definition of individuals who potentially qualify for the presumption; the claimant's claimed condition is not the result of injury by accident arising out of and occurring within the course and scope of his employment with the employer herein; the claimant's claimed condition is due to natural causes that are unrelated to his employment with the employer herein; the claimant's work with the employer herein is not the major contributing cause of his alleged condition or alleged need for treatment; lack of timely notice, late reporting by claimant. §440.185(1), Fla. Stat. (2005); the statute of limitations has expired and acts as a bar to the claim herein; no entitlement to costs or attorney's fees.

The parties entered into the following stipulations:

a. Manatee County, Florida is the proper venue.

b. There was an employer/employee relationship on April 1, 2002 and July 26, 2002, and employer had workers' compensation insurance coverage in effect.

c. E/SA did not accept claimant's accident or injuries as compensable.

d. The parties received timely notice of the pretrial and final hearing.

e. I have jurisdiction over the parties and subject matter of this claim.

f. Claimant's average weekly wage is not at issue.

g. Claimant's permanent impairment rating (PIR) is 27 percent, which consists of a class I rating /4 percent for hypertension and a class II rating/25 percent for his cardiac condition, which equates to a 27 percent rating per the combined ratings chart (E/SA does not accept responsibility for

the PIR).

h. No medical or indemnity benefits have been provided to claimant.

The following documentary items were received in evidence:

Exhibit 1: Uniform Pretrial Stipulation and Pretrial Compliance Questionnaire as amended at the beginning of the final hearing.

Exhibit 2: Deposition of Eric P. Struble taken on January 5, 2007.

Exhibit 3: Deposition of Laurie Manukas taken on April 2, 2007.

Exhibit 4: Deposition of Carlos M. Rodriguez, M.D. taken on June 19, 2007 for facts only.

Exhibit 5: Deposition of Lawrence J. Leiberman, M.D. taken on June 13, 2007 for facts only.

Exhibit 6: Deposition of Patrick F. Mathias, M.D. taken on November 30, 2007.

Exhibit 7: Deposition of Gene Myers, M.D. taken on December 4, 2007.

Claimant Eric P. Struble and S/A's adjuster Laurie Manukas testified at the hearing. Counsel for the parties presented oral argument and submitted written Trial Memoranda.

I have resolved all conflict in the testimony and evidence. Upon review of the evidence, testimony, argument, and applicable law, I make the following findings of fact and conclusions of law:

1. I have jurisdiction over the subject matter and parties, and venue is proper in Sarasota, Manatee County, Florida.

2. The stipulations of the parties are approved and accepted as findings of fact.

3. Claimant Eric P. Struble, 55 years old, is a patrol deputy with the Manatee County

Sheriff's Office, employer herein. He works the night shift from seven at night until seven in the morning. Claimant began as a volunteer with the Sheriff's Posse in 1979 or 1980, attended the police academy, and became a full time paid deputy on December 1, 1981. He testified that he underwent two physical examinations in connection with his work for employer: one with his personal physician for the volunteer work, and one with a doctor chosen by employer. He did not recall the date of either physical examination. Claimant was shown a copy of a physical examination report dated October 28, 1980 by Dr. Thomas Wilson. He said Dr. Wilson was the first doctor he saw after moving to Bradenton, and agreed that because of the date he probably also had a later physical. It was his understanding he passed both physical examinations without evidence of any problems.

In addition to working as a patrol deputy, claimant had a side business, Struble's Painting, Inc., that he began in 1981 and incorporated in 1996. Until his son joined the business in 2006, claimant devoted about sixteen hours a week to the business, and did primarily painting for apartment management and rental companies. When his son joined, they began doing construction painting, and claimant stopped the hands on painting part of the job, and did more administrative duties. He testified that the business was shut down in January 2007. According to claimant, when he was painting, he did not use ladders or scaffolding, but sometimes a two foot stepstool. He did use compressors and agreed the work was physical.

Claimant testified at his deposition that the first time he began treating for anything relative to hypertension, high blood pressure, or cardiovascular disease was after he had heart catheterization on July 26, 2002, and that no physician ever told him prior to April 2002 that he had to lose weight. He said that he was watching a show on Fox News, and they were going over the signs of a pending

heart attack, and he was having pains in his arms as described as one of the signs, so he saw Dr. Carlos Rodriguez in April 2002. He also had shortness of breath on occasion upon physical exertion. Dr. Rodriguez sent him to Dr. Lieberman, and he underwent a stress test and then two catheterizations with stent placement. Claimant said he missed work because of the catheterizations, although he did not recall how much, and received sick leave pay. He did not think he was out for more than a week with either procedure. He told his supervisor, Sgt. Skowfoe, that he would be off work and why each time when he was out for the heart catheterizations.

Claimant continues to treat for high blood pressure and cardiac disease, and spends about $100 per month in medication, and $25 co-pay for each doctor visit. None of the doctors he sees for these conditions have placed any work restrictions on him, and he continues to perform the same patrol deputy duties without difficulty.

According to claimant, the Heart/Lung bill was brought to his attention sometime around the first of 2006 by another police officer, and after reading it, he realized that he might be entitled to some assistance from workers' compensation. He contacted his PBA and talked to them about it, contacted employer's risk management department, filled out a notice of injury with S/A, and retained counsel when his claim was denied. Claimant said he was not given a notice of injury to fill out or any explanation of his rights when he told his supervisor about his heart catheterizations in 2002.

At final hearing, claimant testified that prior to April 2002 he had physical examinations with his family doctor who said he had a strong heartbeat, and he assumed he had a good heart. He said he was not aware of being treated for high blood pressure since 1987, although he was always told that he was chunky and needed to lose weight. He could not recall taking medication for high blood

pressure in the past, but does not disagree with the medical records showing that he did. He thought one of the medications was to prevent adrenaline dumping during stressful situations. He associated a low salt diet given to him by his doctor with being overweight, and was probably first told to lose weight in the 1980's. He testified that he asked for and was prescribed the weight loss drug Fastin in 1996.

4. Laurie Manukas is S/A's adjustor on claimant's file. She testified that she has a petition for benefits in her file dated September 20, 2006 with a date of accident listed as July 26, 2002, seeking medical care under the supervision of doctors, board certified cardiologist or other qualified physician; authorization of medical care for hypertension/heart disease, medical treatment; costs and attorney's fees. A response to petition for benefits was filed dated October 5, 2006 controverting the entire claim; indicating no indemnity or medical benefits are due or owing; the claim does not fall under the presumption statute; presumption is premature; the present condition of the employee is not the result of an injury by accident arising out of and in the course and scope of employment; the condition of the employee is due to natural causes unrelated to employment; the condition complained of is not the result of an injury within the meaning of the term used in the Florida Workers' Compensation Act; there's no causal connection between the employee's condition and his employment; late reporting by employee; statute of limitations has expired; no clear and convincing evidence that employment is major contributing cause of condition; and penalties, interest, cost and attorney's fees are not due or owing.

Manukas testified that before filing the response, she spoke with the employer, the claimant, and contacted Manatee Memorial Hospital's billing department. She did not have a preemployment physical for claimant and did not talk to any of his doctors. She said that under the presumption,

claimant has to be out of work seven days and he was not, as he does not know what days he was out of work, and he reported his claim four years late. Manukas said that claimant did not have a specific accident or injury, and by his own admission heart disease runs in his family. She did not have any of claimant's medical records because she did not yet have a signed release from him. Her file did not contain any information regarding whether employer informed claimant of the existence of the presumption statute or Heart/Lung bill.

Manukas testified that claimant reported an April 2002 date of accident to employer on August 15, 2006 with the nature of the injury as heart disease. A first report of injury was completed on August 21, 2006. Manukas spoke with claimant on August 25, 2006 and did not record the conversation but did take notes. On September 1, 2006 Manukas filed a notice of denial. Manukas did not have other petitions for benefits in her file.

At final hearing Manukas testified that claimant told her during their conversation that he was very healthy before 2002, and she took that statement as true and accurate. She later learned that he had some prior problems. She said that S/A's informational packet regarding workers' compensation rights and benefits was not sent by her, but it is done in the general course of business by S/A's clerk and is usually sent right away after receipt of the notice of injury. Her file did not indicate that any informational brochures were sent to claimant in July or November 2002 when he underwent his catheterizations. She was not aware from her investigation that such information was provided to claimant by employer at that time. She obtained claimant's personnel file and was not aware of any other preemployment physical than the one in 1980.

5. The Court/computer file in this matter reflects that claimant filed another petition for benefits on February 23, 2007 listing a date of accident of July 26, 2002 and seeking compensability

of claimant's heart condition, costs, and attorney's fees. On June 4, 2007 another petition was filed with a date of accident of July 26, 2002 seeking medical care with a board certified cardiologist or other qualified position, authorization of medical care for hypertension/heart disease, compensability, costs, and attorney's fees. Also on June 4, 2007 claimant filed a Notice of Voluntary Dismissal of the September 25, 2006 and February 23, 2007 petitions for benefits.

On May 29, 2007 Manukas prepared two notices of denial denying medical bills from Cardiovascular Associates, Inc. for dates of service May 7, 2007 and May 9, 2007. She also prepared a response to petition for benefits on June 13, 2007 setting forth the same defenses as in the October 2006 response.

6. Claimant began treating with internist Carlos M. Rodriguez, M.D. in October 2001. Claimant presented with a history of a little bit of hypertension (borderline) and some surgical history, and with a complaint of stomach problems and heartburn secondary to gastritis. Later he complained of occasional headaches. Dr. Rodriguez prescribed weight reduction and a low-salt diet, and Cozaar, a blood pressure medication, on October 31, 2001. In April 2002 claimant had a follow-up of his hypertension and also had some chest discomfort. He reported an episode of chest pain three or four days prior while walking up the stairs.

Dr. Rodriguez received a letter from cardiologist Dr. Leiberman dated June 10, 2002. Dr. Leiberman noted that claimant developed some chest pain walking up the stairs in the Medical Arts Building (where Dr. Rodriguez and Dr. Leiberman had offices), with tightness in the chest going into his arms. Claimant was noted to have a one year history of hypertension and an early family history of heart disease, with his mother passing away at age 61 of a heart attack. Claimant underwent a stress test on June 24, 2002 and the impression was noted as: abnormal exercise myoview stress test;

myoview images show interior apical wall and apex moderate ischemia with normal wall motion, wall thickness, and ejection fraction. Dr. Rodriguez indicated that eventually claimant ended up having some stent placements because of his coronary disease. He also treated claimant for allergic rhinitis, post nasal drip, gastritis, and elevated cholesterol.

Dr. Rodriguez testified that he explained to claimant what borderline hypertension and hypertension meant, and claimant seemed to understand.

7. Claimant saw cardiologist Lawrence J. Leiberman, M.D. on June 10, 2002, for chest pain on referral from Dr. Rodriguez. Claimant provided a history of having severe tightness across his chest and going down both arms while walking up the stairs in the Medical Arts Building, which persisted until he reached the fifth floor and rested. Claimant reported several similar episodes since then. He also reported that one night while he was arresting someone under a very stressful and physical condition he again had a tightness across his chest going down both upper extremities. Claimant also reported a one year history of hypertension and a family history of early heart disease, with his mother dying of a heart attack at age 61.

Dr. Leiberman diagnosed angina pectoris, hypertension, and cardiac murmur, and conveyed those diagnostic impressions to claimant. Dr. Leiberman also noted that claimant had multiple risk factors for cardiac disease, including age and gender, hypertension, and family history, which he also discussed with claimant. He said that claimant seemed to comprehend what they talked about. Dr. Leiberman ordered a stress test and echocardiogram, and requested that claimant back off on his caffeine use and go easier on his physical activities. Claimant's nuclear stress test of June 24, 2002 was abnormal and showed area of the heart muscles that were ischemic, which meant they weren't getting enough blood supply and oxygen, which is equivalent of his angina, according to Dr.

Leiberman. Claimant's echocardiogram of the same date showed that his heart muscle was functioning correctly and he had a trivial leak in the aortic and mitral valves, per Dr. Leiberman.

Dr. Leiberman told claimant on July 3, 2002 that he would probably have to have a heart catheterization, and sent him to Dr. Class. Claimant's first heart catheterization was July 26, 2002 by Dr. Class, and claimant continued to follow with Dr. Class after that. Dr. Leiberman testified that risk factors are not the same thing as causes of heart disease, and that it is possible for a person to have multiple risk factors for heart disease but not develop heart disease, and vice versa. He said that he does not do interventional work, but that a person would be off work probably a few days after catheterization or stenting, so they don't do anything that would break open the area where they did the cath through the femoral artery. He said he would probably also ask a sheriff's deputy who underwent a stent procedure to first do some part time work with no real heavy physical activity and then slowly work them back into their full position. Dr. Leiberman said that what claimant has or what he was shown to have after the tests is defined as coronary artery disease, which is a form of heart disease.

8. Claimant underwent his independent medical examination (IME) on May 9, 2007 with cardiologist Patrick F. Mathias, M.D., who is board-certified in internal medicine, cardiology, critical care, interventional cardiology, and electrophysiology. He is also certified by the American Society of Hypertension as a hypertension specialist. Dr. Mathias reviewed claimant's medical records, which showed that he started having symptoms around May or June 2002, had a stress test that was abnormal, was taken to the hospital and found to have an occluded left anterior descending coronary artery, and a stent was placed in his vessel. In November of the same year, claimant was brought back to the hospital, the stent was reopened up, and a second stent was placed in the right

coronary artery. Dr. Mathias said that since then, claimant has been doing fairly well on intensive medical therapy consisting of Altace ten milligrams a day, Vytorin 1/20 daily, Nexium and Propranolol. Dr. Mathias explained that Altace is used to treat hypertension and also to improve the health of the lining of blood vessels and to prevent further heart attacks and strokes; Propranolol is a beta blocker that is used to treat coronary artery disease and angina; Vytorin is a cholesterol medicine that is used to lower the cholesterol and prevent further blockages from forming in someone's heart; and Nexium is a proton pump inhibitor used to treat hiatal hernia.

Upon examination, claimant weighed 227 pounds, was obese, his blood pressure was 130 over 70, and his physical examination was otherwise unremarkable. An EKG was done which showed normal sinus rhythm and was within normal limits.

Dr. Mathias diagnosed obesity, coronary artery disease status post two vessel stenting, chronic stable angina pectoris, and probably essential hypertension. Dr. Mathias explained that coronary artery disease is a condition where cholesterol and other substances clog up the vessels in the heart, and is the leading cause of death in the United States. Essential hypertension is high blood pressure for which a cause is not evident, and is considered a cardiovascular disorder, per Dr. Mathias.

Dr. Mathias was shown claimant's October 28, 1980 Florida Police Standards Physical Examination form. He testified that the blood pressure reading of 130 over 90 was considered normal at the time, and the EKG was reported as normal. He said there was no evidence from that examination that claimant had either hypertension or coronary artery disease on the date of that examination. Dr. Mathias testified that claimant was obese and has a positive family history as risk factors for the development of coronary artery disease. He also thought that in the past claimant's

cholesterol may be higher, but all the cholesterol readings he reviewed are normal. He said claimant also has had a very stressful sleep-wake cycle for the last 24 years. Dr. Mathias testified that it is impossible to tell in any accurate manner when a person's arteries start to develop plaque. He said that since there is no scientific way to really figure out when the date of onset of the condition is, he uses the date the patient first had symptoms. He said claimant's symptoms were those of acute coronary syndrome-he was getting ready to have a heart attack, which is why his doctors did the stress test and put stents in him. According to Dr. Mathias, acute coronary syndrome is by its very definition a condition that burns out and heals itself within three months if not attended to, so he said there was no scientific basis to another doctor's opinion that claimant's coronary artery disease developed 15 years prior to the onset of symptoms.

Dr. Mathias testified that there is a difference between a risk factor and a cause for a condition. He explained that a risk factor is a condition or a problem that a patient has that has a statistical correlation to the development of a disease. According to Dr. Mathias, a person can have a bunch of risk factors and never get the disease, or could have a severe form of the disease and not have any risk factors. He said that a cause is an actual pathological and scientific linkage where we know that a cause has actually caused the disease, such as getting infected with a pneumonia organism causes pneumonia. He said we do not know what the cause of coronary artery disease is, but we have identified risk factors and a whole host of mechanisms, the most fashionable at this time being inflammation. He testified that he has identified some of claimant's risk factors for his coronary artery disease but cannot give a cause.

Dr. Mathias testified that claimant has really poor sleep habits related to his 7 pm to 7 am shift, and epidemiological studies have clearly shown that sleep disturbance in nocturnal workers

have a higher incidence of a host of medical conditions, including hypertension and coronary artery disease. He said that psychosocial stress, one of the stressors being sleep deprivation or bad sleep, has been clearly defined as one of the risk factors for coronary disease in heart studies.

Dr. Mathias testified that claimant's July 26, 2002 catheterization showed a 90 percent stenosis or blockage, and that if claimant had been his patient, he would not have been capable of going back to work at that point. He testified that a 90 percent stenosis suggests that he was ready to have a heart attack, and 100 percent stenosis is a heart attack. He said that claimant needed to have a stent placed, be put on medications, and watched closely. He said that when claimant was sent home from that procedure, he had blockages in two other vessels which needed to be fixed, so he could not be sent back to work until those vessels had been fixed too. He said that for his patients who undergo catheterization, they are taken off work for at least seven to ten days if they are involved in anything that is physical, because they have a fresh puncture in the artery and the groin, and excessive physical activity could result in that puncture breaking open and hemorrhaging. He noted that claimant's doctor suspected this as he was sent for an ultrasound. It was Dr. Mathias' opinion that claimant was incapacitated from performing his full duties as a police office as of July 26, 2002.

Dr. Mathias testified that for his patients who have stenting procedures, he also keeps them off work for seven to ten days at least, and puts them on a medication called Plavix, which is a blood thinner. Therefore if the patient has an occupational risk of a head injury or any other kind of significant injury, he keeps them off work until the Plavix is stopped. It was his opinion that claimant was incapacitated from performing his job as a police office as a result of the stenting procedure. He said the same was true for the additional stent claimant underwent on November 15, 2002.

Dr. Mathias testified that it is necessary to treat hypertension in order to effectively treat coronary artery disease, and the medication claimant takes for his hypertension is medically and reasonably necessary for treatment of his heart condition. He said claimant was at maximum medical improvement (MMI) as of the date he was seen. He gave him a Class III impairment with 35 percent impairment because he requires drugs to prevent angina and has a history of coronary artery disease but may develop angina after moderately heavy physical exertion. For the hypertension, Dr. Mathias placed claimant in a Class I and assigned 4 percent.

Dr. Mathias said that claimant's blood pressure reading on the date of the E/SA's IME exam of 171 over 105 was significantly elevated, and he would modify claimant's medication and keep him off work until the blood pressure came down, if claimant were his patient.

Dr. Mathias testified that coronary artery disease is a progressive condition, and there is at least a 30 to 40 percent probability that claimant's coronary artery disease will progress in the next five to ten years, and he may require future interventions, which may include bypass surgery. He will also require continued treatment for his hypertension consisting of medication for life, blood work at least three times a year, a stress test once a year or once in two years, and catheterizations if abnormality shown on the stress test, per Dr. Mathias. Dr. Mathias said claimant would need to see his internist about every two or three months, and his cardiologist at least twice a year.

Dr. Mathias testified that at least two or three studies have shown that law enforcement officers have a high incidence of heart disease and hypertension.

On cross examination, Dr. Mathias agreed that claimant could be put in a Class II impairment as he rarely has episodes of chest tightness, and if so, his impairment would be 25 percent. He said he would be uncomfortable with claimant on foot chasing a subject or subduing someone because

that might provoke angina and he would have to back off and immediately slow down. If he is required to be on Plavix in the future he would not be able to do anything that places him in a situation where he could suffer a head injury.

9. Claimant underwent an E/SA IME with board-certified cardiovascular disease physician Dr. Gene E. Myers on August 7, 2007. Claimant reported that he first noticed bilateral forearm and upper arm discomfort in 2000 induced by exercise and relieved by rest, and it exaggerated and accelerated in June of 2002. Claimant received medical care for the condition in July and November of 2002 including a stent. Claimant's history included that his mother developed premature atherosclerosis and hypertension, and had an event at the age of 61 and died of that myocardial infarction. According to Dr. Myers, atherosclerosis takes fifteen to twenty-five years to develop, so claimant's mother's probably started in her late 30s or early 40s statistically, which would increase the risk of her offspring having premature coronary disease.

Claimant reported that symptomatically he had no symptoms and there was no evidence of a clinical reoccurrence of obstructive coronary disease remaining producing symptoms at the time of his visit. Dr. Myers did not note much physical findings on examination except exogenous obesity and hypertension. He said that claimant had an elevated platelet count which can play a role in blood clotting, and they believe that blood clotting is one of the ways that atherosclerotic plaque grows by plaque rupture and clot formation and then reorganization, and that claimant had not been previously told about the elevated platelet count. Dr. Myers diagnosed an anginal equivalent in the form of bilateral arm pain, exogenous obesity, hypertension, and polycythemia. Claimant also had previously smoked for not more than ten years and had not smoked since the age of 28.

Dr. Myers testified that claimant had risk factors for the development of heart disease

consisting of a family history of premature atherosclerosis, hypertension, exogenous obesity, cigarette usage a number of years ago, and elevated cholesterol. Dr. Myers testified that the cause for claimant's problem is atherosclerosis, but what caused the atherosclerosis is unknown. He said that what increases the risk of and aggravates the atherosclerosis are hypertension, obesity, family history, elevated cholesterol, and polycythemia, but the actual inciting factor is not known. Dr. Myers was of the opinion that claimant's profession as a police officer did not play any more of a role than anybody's profession would have as a working individual in causing the diseases. He thought the atherosclerosis is not related to claimant's profession and would have occurred in anybody. He felt the ratings of 25 percent for the coronary artery disease and 4 percent for claimant's hypertension were fair. He did not feel claimant had work restrictions, and felt he had reached MMI.

Dr. Myers testified that he would not have taken claimant off work in relation to his blood pressure reading when seen, because blood pressure can be regulated by medicine, but he would restrict him from heavy physical labor during an entire work day. He noted that he did not necessarily disagree with Dr. Mathias, but he would have put an ambulatory blood pressure monitor on claimant to see what his mean blood pressure is over a 24 hour period.

10. Claimant did not give notice of his injury within the 30 days required by section 440.185(1), Fla. Stat. (2002), or the 90 days required by the occupational disease statute at 440.151(6), Fla. Stat. (2002). However, regardless of whether the April 1, 2002 or July 26, 2002 date of accident is used, such failure does not bar claimant's petition because the employer or the employer's agent (claimant's supervisor), had actual knowledge of the injury per section 440.185(1)(a), Fla. Stat. (2002). Claimant testified that he notified his supervisor each time that he underwent the cardiac procedures and the reason for his missing work after those procedures.

11. Nor does the statute of limitations bar the claim. Pursuant to section 440.19(1), the petition must be filed within 2 years after the date on which the employee knew or should have known that the injury or death arose out of work performed in the course and scope of employment. Claimant testified that he did not become aware of section 112.18, Fla. Stat. (2002), or the Heart/Lung bill until he was advised by a fellow police officer in January 2006, and he filed his first petition in September 2006, which was within two years. Prior to that, he did not have any medical opinion that his conditions were work related. Thereafter, although this petition was dismissed, there were other petitions filed to toll the running of the statute before the dismissal. *See, Rice v. Reedy Creek Improvement District*, 924 So.2d 882 (Fla. 1st DCA 2006).

Further, even if claimant had not timely filed his petition, E/SA should be estopped from asserting the running of the statute of limitations because claimant was never advised by E/SA of the rights, benefits, and procedures, including the limitations period, under the Florida Workers' Compensation Law at the time of claimant's undergoing the cardiac catheterizations and stentings; claimant was unaware of such rights, benefits, and procedures, including the limitations period; and this ignorance accounted for his failure to obtain authorization for care within the limitations period. *See, The City of Fort Lauderdale v. St. Louis*, 917 So.2d 224 (Fla. 1st DCA 2005), and other citations contained therein.

12. Having established that timely (actual) notice was provided to E/SA of claimant's injury, and that the statute of limitations has not expired, claimant must show that he is entitled to the statutory presumption pursuant to section 112.18, Fla. Stat. of causation between his hypertension and coronary artery disease and his employment with the Manatee County Sheriff's Office.

The Florida Supreme Court discussed the application of the presumption in the case of

Caldwell v. Division of Retirement, Florida Dept. of Administration, 372 So.2d 438 (Fla. 1979). According to the Court, the presumption affects the burden of persuasion, and the presumption can be rebutted by showing some other specific hazard or non-occupational factor is the cause of the disease. The presumption relieves the claimant from the necessity of proving an occupational causation of heart disease, and casts on the E/C the burden of persuading the trier of fact that the disease was caused by a non-occupationally related agent. The Court noted that 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, and that to rebut the presumption the E/C must show that the disease causing disability was caused by a specific, non-work related event or exposure. They went on to say that where the evidence is conflicting, the quantum of proof is balanced and the presumption should prevail, and if there is evidence supporting the presumption, the E/C can overcome the presumption only by clear and convincing evidence. In the absence of cogent proof to the contrary, the public policy in favor of job relatedness must be given effect.

The presumption does not apply unless the qualified law enforcement officer successfully passed a pre-employment physical examination upon entering into service, which examination failed to reveal any evidence of any such condition. Section 112.18, Fla. Stat. was amended effective July 1, 2002 to include within the class of protected claimants all law enforcement officers in Florida, and not just state officers. However, regardless of whether an April 1, 2002 or a July 26, 2002 date of accident is used, claimant is included within the class because the amendment has been held to be procedural in the case of *Seminole County Sheriff's Office v. Johnson*, 901 So.2d 342 (Fla. 1st DCA 2005). Claimant may choose the date of accident, and as the petitions for benefits were filed with the date of accident of July 26, 2002, the date of claimant's first procedure, such is appropriate and will

not be amended to the date of April 1, 2002 as suggested by E/SA.

13. In this case, claimant falls within the protected class of the statute, as he is a law enforcement officer. He suffers from two of the enumerated conditions, hypertension and heart disease. Although Dr. Mathias termed claimant's hypertension "essential", he also testified it was a cardiovascular disease, and that treatment of the hypertension was required to treat the coronary artery disease. Thus, claimant's hypertension is the type intended to be covered by the statute. *See, City of Miami v. Thomas*, 657 So.2d 927 (Fla. 1st DCA 1995), where the court rejected the JCC finding that the term "hypertension" as used in section 112,18 was meant to include any kind of hypertension, i.e. hypertensive conditions other than arterial or cardiovascular hypertension.

Claimant suffered partial disability as a result of the condition claimed, in that he was taken off work for the catheterization and stenting procedures, which Dr. Mathias testified was reasonable and necessary. Dr. Mathias would have taken claimant off work for his high blood pressure reading during his IME with Dr. Myers; Dr. Myers would not necessarily have done so, but did not disagree with Dr. Mathias. Per the Court in the case of *City of Mary Esther v. McArtor*, 902 So.2d 942 (Fla. 1st DCA 2005) disablement means the event upon which the employee becomes actually incapacitated, partially or totally, from performing his employment, and a determination of disability turns upon the person's capacity to earn income, not upon the employer's decision to pay the injured person's salary while he is incapacitated. Thus, the fact that claimant received pay or sick leave while off work for his procedures does not mean that he was not incapacitated or not unable to earn income. Nor is he required to miss at least seven days, as there is no time limit contained in the definition of disability contained at section 440.02(13), Fla. Stat. (2002).

The claimant underwent the required preemployment physical examination that was negative

for any evidence of either hypertension or heart disease. Dr. Mathias testified to the absence of those conditions per the physical examination report. There is no requirement that the examination take place at any particular time, so long as it is preemployment. None of the medical records in evidence demonstrate that claimant was diagnosed with hypertension or coronary artery disease prior to his employment with employer herein.

14. Based upon the foregoing, claimant has satisfied the prerequisites of section 112.18, Fla. Stat. (2002) and the statutory presumption that his hypertension and heart disease were caused by his employment as a law enforcement officer. As such, claimant is relieved from the necessity of proving an occupational cause of his heart disease and hypertension, and the burden of persuasion shifts to the E/SA to show competent substantial evidence that the diseases were caused by some non-work related factor. *See, City of Tarpon Springs v. Vaporis*, 953 So.2d 597 (Fla. 1st DCA 2007). Thus, E/SA's defense that the claimant has not established the major contributing cause of his conditions is rejected as inapplicable.

E/SA has not met this burden to show that claimant's conditions were caused by some non-work related factor. I agree with claimant that claimant's various risk factors have not been established to be a cause of his condition. In reaching this determination, I relied on the opinions of Dr. Mathias over that of Dr. Myers where they differ, because Dr. Mathias has additional board-certifications over that of Dr. Myers, and because Dr. Mathias' testimony was more consistent with logic, reason, and the remaining evidence in this case. Thus, I accept his testimony regarding claimant's sleep deprivation, and that such sleep deprivation and shift work produces a high incidence of hypertension and heart disease, and that at least two or three studies have shown that law enforcement officers have a high incidence of heart disease and hypertension. I also accept his

testimony concerning claimant's off work status during and after the procedures and for his elevated blood pressure. I do not find it relevant that claimant may not have discussed his painting business with Dr. Mathias, as claimant testified he devoted only 16 hours per week to that enterprise, it does not negate the fact that he worked the night shift for 24 years, and it is the working at night that is important per Dr. Mathias.

Based upon the foregoing, claimant has established the compensability of his hypertension and heart disease and such compensability has not been rebutted by E/SA.

15. E/SA should authorize medical care for hypertension and heart disease for claimant with a board-certified cardiologist or other qualified physician, which is reasonable, medically necessary, and causally related to the industrial injury.

16. Counsel for claimant is entitled to an attorney fee and taxable costs at E/SA's expense related to prevailing herein and securing the benefits pursuant to section 440.34(3)(a), (b), & (c), Fla. Stat. (2002) and jurisdiction should be retained to address the amount.

WHEREFORE, based upon the forgoing, it is **ORDERED AND ADJUDGED:**

A. Claimant gave timely (actual) notice of his accident/injury to E/SA, and the statute of limitations does not bar the claim.

B. Claimant's hypertension and heart disease are compensable.

C. E/SA shall authorize medical care for claimant for hypertension/heart disease with a board-certified cardiologist or other qualified physician.

D. E/SA shall pay counsel for claimant an attorney fee and taxable costs related to the benefits secured and jurisdiction is retained to address the amount.

DONE AND MAILED this 27th day of December, 2007, in Sarasota, Manatee County, Florida.

Diane B. Beck

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