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

Raul A. Benavides,
Employee/Claimant,

vs.

Miami- Dade County aka Miami- Dade Fire Rescue/Miami Dade County Risk Management,
Employer/Carrier/Servicing Agent.
_______________________________________/

OJCC Case No. 14-013949SMS

Accident date: 12/26/2013

Judge: Sylvia Medina-Shore

COMPENSATION ORDER

THIS CAUSE came before the undersigned Judge of Compensation Claims for a final hearing on 8/3/15 regarding petition for benefits (PFBs) filed 11/25/14 and 12/15/14. The claimant is represented by Paolo Longo, Esquire and co-counsel, Kimberly Hill Esquire. The employer/self-insured is represented by Daron Fitch, Esquire.

Documentary Exhibits:

JCC-

1. Pre-trial stipulation filed 4/22/15 (DE#59).

Claimant-

1. PFBs filed 11/25/14 (DE#32) and 12/15/14 (DE#35).
2. Deposition of Dr. Louis Fernandez taken 2/17/15 filed 5/20/15 (DE#67).
3. Deposition of Dr. Louis Fernandez taken 5/7/15 filed 5/20/15 (DE#71).
4. Direct Examination of Dr. Kales (objection to cross-examination testimony sustained) in deposition (DE#108).

E/C-

1. Deposition of Dr. Leonard Pianko taken 11/12/14 filed 5/26/15 (DE#78).

2. CV of Dr. Pianko filed 6/16/15 (DE#96).

3. Pre-employment file filed 8/3/15 (DE#105).

4. Medical records attached to Dr. Pianko's deposition (DE#109)

5. Deposition of Dr. Pianko taken 7/8/15 filed 7/22/15 (DE#100).

6. Responses to PFB prepared 12/11/14 (DE#34) and 12/23/14 (DE#38).

7. Notice of denial prepared 4/24/14 (DE#110).

8. Claimant's deposition taken 5/6/15 (DE#111).

Claims:

1. Compensability of disabling arterial and cardiovascular hypertension and/or heart disease pursuant to Section 112.18(1).

2. Temporary total disability (TTD) and/or Temporary partial disability (TPD) benefits from 12/26/2013 and continuing at correct compensation rate.

3. Adjustment of claimant's average weekly wage (AWW).

4. Authorization of medical care and testing with cardiologist, primary care physician, and internal medicine specialist.

5. Payment of impairment income benefits (IIBs) from 8/12/14 (14% Class 1 for hypertensive cardiovascular disease and 10% under Class 1 for cardiomyopathy).

6. Penalties, interests, costs, and attorney's fees.

Defenses:

1. Entire claim is denied on the grounds that claimant is not entitled to the presumption under section 112.18 (Fla. Stat. 2013) as there is evidence of heart disease and/or hypertension on claimant's pre-employment physicals.

2. Claimant's heart attack did not occur in the course and scope of claimant's employment.

3. Alternatively, claim is denied on the grounds that there are non-occupational causes of claimant's heart disease.

4. Alternatively, claimant is not entitled to the presumption as he departed in a material fashion from his prescribed course of treatment from his personal physician and the departure resulted in a significant aggravation of his heart disease.

5. No IIBs are due as claimant has not reached MMI. If claimant is found to have reached MMI, then his permanent impairment ratings are NOT 14% and 10%.

6. PICA are denied as not due or owing.

Findings of Fact and Conclusions of Law:

Final Hearing Testimony:

1. Raul Benevides (the claimant) testified in person at the final hearing as well as in a prior deposition. In 2006, claimant completed an extensive pre-employment physical with Miami-Dade County. The pre-employment physical revealed "borderline hypertension" but no evidence of heart disease. As such, the claimant was hired as a firefighter. In addition to his firefighter duties, claimant was promoted to the Hazmat unit in 2009. The Hazmat unit responds to emergency scenes dealing with hazardous materials.

2. On 12/26/2013, while off duty, claimant began feeling chest pain and was taken to West Boca Medical Center. Claimant was diagnosed with a heart attack as well as cardiomyopathy. He was kept in intensive care for several days after the successful placement of a stent in his coronary artery. He returned to work as a firefighter in May of 2014 and has been under the care of a cardiologist ever since. After viewing claimant's demeanor and considering his deposition and final hearing testimony, I find claimant credible.

3. Mr. Benavides filed a claim for workers compensation benefits under F.S. §112.18 and was initially authorized to treat with cardiologist, Dr. Pianko, under the 120 day

pay and investigate rule. His claim was ultimately denied based on the inapplicability of the 112.18 presumption and in the alternative, the presumption being rebutted.

4. At the onset of the 8/3/15 hearing, the parties made their opening statements. In considering the opening statements, trial memorandum, and discovery, it is apparent the parties' primary focus is the claim for compensability of claimant's coronary artery disease (CAD)/heart condition and the defenses thereto. As such, this order first addresses the claims and defenses regarding claimant's CAD/heart condition. To that extent, the employer herein concedes the F.S. 112.18(2002) presumption applies to claimant's claim for compensability of the CAD.

Burden of Proof relating to F.S. 112.18 Presumption-

5. When the F.S. 112.18 presumption applies, claimant's burden of proving major contributing cause by medical evidence is fully met. *See, Fuller v. Okaloosa Correctional Inst., 22 So.3d 803 (Fla. 1st DCA 2009).* The burden then shifts to the E/C to overcome or rebut the presumption by showing a specific non-occupational cause of the claimed condition.

6. Case law has clarified that an injured worker is under no obligation to present evidence of occupational causation to support a claim under the presumption, beyond what is necessary to establish the applicability of the presumption. *See, Walters v. State of Florida, 100 So.3d 1173 (Fla. 1st DCA 2012).* The burden of proof in rebutting the presumption however depends on the existence of evidence in support of the 112.18 presumption. If the injured worker solely relies on the 112.18 presumption to support his/her claim, the E/C can rebut the 112.18 presumption with "competent evidence". When there is medical evidence supporting the presumption (accepted as credible by the JCC), then "clear and convincing evidence" is required to rebut the 112.18 presumption. *See, Caldwell v. Div. of Retirement, 372 So.2d 438 (Fla. 1979).*

7. In the present case, I find claimant has provided medical evidence in support of the 112.18 presumption. Drs. Pianko and Dr. Fernandez (claimant's IME) testified, which testimony I accept, that chronic stress (as experienced by fire fighters in certain circumstances) increases the risk of developing heart disease (Pg. 49 of Dr. Pianko's 11/12/14 deposition; Pg.14 of Dr. Fernandez' 2/17/15 deposition). Dr. Fernandez explained chronic stress, like hypertension, can soften the wall of an artery. This makes it easier for the deposition of cholesterol or soft plaque to build up (Pg. 30 of Dr. Fernandez' 5/7/15 deposition). Drs. Pianko and Fernandez acknowledged studies, correlating some of the firefighter duties and circumstances to chronic stress leading to sudden a cardiac event and/or heart disease.

8. Claimant also provided the testimony of Dr. Kales, a medical expert who published various studies and review papers in peer review journals about firefighters, EMT, and police officers and cardiovascular disease. In my 7/16/15 final evidentiary hearing order, I excluded Dr. Kales' conclusions as testified to on direct examination and his opinions regarding the *instant claimant* on cross-examination. Upon re-hearing at the 8/3/15 final hearing, I allowed Dr. Kales' testimony (including his conclusions) pertaining to the various studies into evidence but excluded any opinions concerning the claimant (on cross-examination) as Dr. Kale is not an authorized physician, IME, or EMA. *See, Witham v. Sheehan Pipeline Construction Co., 45 So.3d 105, (Fla. 1st DCA 2010).*

9. In summary, Dr. Kales' studies conclude that some of the more stressful firefighter duties: fire suppression, alarm response, alarm return, and physical training showed statistically elevated risks for sudden cardiac death and heart disease. I accept Dr. Kales' testimony to the extent that Drs. Pianko and Fernandez took it into consideration in their ultimate opinions. Both physicians (Drs. Pianko and Fernandez) found Dr. Kales' studies useful in understanding the interplay between certain firefighter duties and chronic stress.

Specifically, I accept Dr. Fernandez' opinion that in addition to the ordinary stressful duties of fire suppression, alarm response and return, and physical training, claimant in the instant case has added stress of dealing with hazardous materials as part of the Hazmat Unit. Dr. Pianko specifically refers to Mr. Benavides' occupation as a firefighter as a 20% cause of his heart disease (Pgs. 27-28 of Dr. Pianko's 7/8/15 deposition). Therefore, in order to successfully rebut the 112.18 presumption in the instant case, I find E/C must do so satisfying the "clear and convincing" burden of proof.

"Risk Factors"- Theory or Evidence for CAD-

10. The Employer/Carrier must show that the major contributing cause or causes of the Claimant's heart disease is something other than his employment, *based upon objective medical findings found through physical examination and/or diagnostic testing within a reasonable degree of medical certainty. Fuller v. Okaloosa Correctional Inst., 22 So.3d 803 (Fla. 1st DCA 2009); §440.09(1), §440.151(1), Fla. Stat; See also Charles W. Erhardt, Wests Florida Practice Series, Florida Evidence §304.1* (2004 ed.) (stating that when dealing with presumptions, whatever the substantive law of the case dictates as the presumption holder's burden in the absence of such a presumption is the burden required of the opposing party to overcome the presumption.).

11. From a physiological standpoint, Dr. Fernandez explained claimant had a blockage of plaque in the left anterior descending artery (LAD) that ruptured; thereby causing a clot or thrombus which culminated in the damage to the myocardium (MI) or heart attack (Pg. 7 of Dr. Fernandez' 2/17/15 deposition). Both Drs. Pianko and Fernandez testified it is medically unknown what causes a particular person to have a heart attack (the rupture) and/or heart disease. However, both physicians discussed the relevant "risk factors" and their contribution to development of CAD.

12. Presently, the medical community rely on studies (*Framingham Study* being one of the studies) revealing the presence of certain "risk factors". The risk factors may predispose or predict development of heart disease and/or a heart attack (Pgs. 37-38 of Dr. Pianko's 7/8/15 deposition). According to the *Framingham Study*, widely accepted by cardiologists, there are seven known risk factors predicting or contributing to the formation of CAD: hypertension, hypercholesterolemia (high cholesterol), smoking, diabetes, obesity, lifestyle and family history. Claimant has two of the seven Framingham risk factors: hypertension and high cholesterol (Pgs. 43-44 of Dr. Pianko's 11/12/14 deposition) In addition to these two risk factors, Drs. Pianko and Fernandez opine claimant has a third risk factor, that of work related stress (Pg. 49 of Dr. Pianko's 11/12/14 deposition and Pg. 14 of Dr. Fernandez' 2/17/15 deposition).

13. I reject claimant's argument that "risk factors" are pure theory and not evidence for purposes of determining causation of CAD in workers' compensation cases. In the present case, the medical testimony is undisputed that "risks factors" have been extensively studied and accepted by the medical community as being contributing factors to development of CAD. I accept the testimony of Drs. Pianko and Fernandez to that effect.

<u>Motion to renew request for EMA</u>-

14. Dr. Pianko opined claimant's pre-existing (non-work related) hypertension and high cholesterol are the major contributing cause of his heart disease (CAD). He assigned hypertension and high cholesterol as 51% contributing to claimant's heart disease whereas the remaining 49% was comprised of stress (20%) and other unknown factors (Pg. 51 of Dr. Pianko's 11/12/14 deposition). Dr. Fernandez, on the other hand, could not opine as to the major contributing cause of claimant's CAD. Rather, he opined all three risk factors contributed to claimant's CAD (Pg. 9 of Dr. Fernandez' 5/7/15 deposition).

15. At the 8/3/15 hearing, claimant reiterated his request for appointment of an EMA, previously denied via 5/27/15 final evidentiary hearing order. As there is no disagreement between *two health care providers*, the EMA request is denied (for the reasons stated in the 5/27/15 order). To that extent, the 112.18 presumption is a rule of law which attaches to certain evidentiary facts and is productive of certain procedural consequences. The 112.18 presumption is not itself evidence and has no probative value. *See, Nationwide Mutual Ins. Co. v. Griffin, 222 So.2d 754, 756 (Fla. 4th DCA 1969).*

Motion to Renew Claimant's *Daubert* Motion to Strike Dr. Pianko's opinions and vacate final evidentiary hearing order entered 7/16/15 (DE#98).

16. At the 8/3/15 hearing, claimant renewed his *Daubert* motion to strike Dr. Pianko's opinions. Claimant takes the position that Dr. Pianko's MCC opinions do not satisfy the *Daubert* evidentiary standard and should be excluded. To that extent, claimant argued at the 8/3/15 hearing that utilization of differential diagnosis is inapplicable in the case at hand because there is only one known condition (CAD)-not multiple conditions.

17. While claimant's heart condition (CAD) is a known factor in the instant case, presently there are no objective diagnostic tests to prove ***the specific cause of CAD in a particular individual***. Both physicians (Drs. Pianko and Fernandez) in the present case testified there are individuals known to have several risk factors yet, never have CAD. While in other cases, there are individuals with few or no risk factors yet, have CAD. Accordingly, in determining causation of heart disease (and other diseases such as cancer), physicians typically consider the presence or absence of risk factors-utilizing a differential diagnosis analysis and apply same to the particular individual. Differential diagnosis may be used to factor in, or factor out, various risk factors to determine the cause of various diseases. *Schultz v. Akzo Nobel Paints, LLC, 721 F.3d 426, 434 (7th Cir. 2013).*

18. In the case at hand, Drs. Pianko and Fernandez ruled out the following risk factors as applying to claimant's CAD: smoking, diabetes, obesity, lifestyle and family history. Based on medical history, medical records, diagnostics tests, and epidemiological studies, Drs. Pianko and Fernandez ruled in risk factors: hypertension, high cholesterol, and stress as causing claimant's CAD.

19. As to MCC, Dr. Pianko opined claimant's pre-existing hypertension and high cholesterol are the significant or MCC (51%) of claimant's CAD while exposure to work-related stress is a minor factor (20% within the remaining 49%). Dr. Fernandez, on the other hand, could not provide a MCC opinion. He testified that all three factors contribute to claimant's CAD.

<u>Admissibility of Dr. Pianko's MCC Opinion under *Daubert Standard*</u>-

20. To be admissible into evidence, an expert's testimony must be relevant, based on reasonable methodologies that were reliably applied to the facts, established by a preponderance of the evidence. *Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 592-593.* Case law has clarified an expert's opinion is admissible if: (1) the testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case *See, Giamo v. Florida Autosport, Inc., 154 So.3d 385, 387-388 (1st DCA 2014).*

21. The timeliness and facial sufficiency of claimant's *Daubert* Motion to Strike are not at issue in the present case. To that extent, I find the parties timely addressed the *Daubert* evidentiary objection with the medical experts (whose depositions were taken twice each).

22. I find Dr. Pianko's testimony is based on sufficient facts and data and are the product of reliable principles and methods. Dr. Pianko considered claimant's pre and post heart attack diagnostic testing, condition, and treatment. He further conducted his own testing and

considered epidemiological studies such as the *Framingham* study as well as Dr. Kales' studies. Dr. Pianko did not solely rely on his clinical experience and training.

23. Dr. Pianko admits there is presently no test ranking particular risk factor(s) in causing CAD. However, I do not find this to be a fatal flaw to his MCC opinion because Dr. Pianko utilized reliable scientific knowledge and reasonably applied them to the facts of the case at hand. I find the MCC of claimant's CAD is similar to the causation issue in *Schultz*, wherein Dr. Gore opined that exposure to benzene was a significant cause of the cancer, despite the history of cigarette smoking (based on applying principles and methodologies to the facts). *See, Schultz v. Akzo Nobel Paints at 4434.*

24. Dr. Pianko explained that development of CAD is a slow process. Studying epidemiology and following people over time with catheterizations, it has been found that plaque usually worsens with existence of risk factors, with stress playing a role (Pgs. 37-38 of Dr. Pianko's 7/8/15 deposition) As the evidence substantiates the presence of hypertension and high cholesterol at least two years prior to claimant's employment as a firefighter, Dr. Pianko opined that these two risk factors were the MCC of claimant's CAD. I find Dr Pianko was well acquainted with claimant's medical history and current medical condition, he relied on published medical studies generally accepted within the medical community, and applied the results of the studies to the facts of the instant case in reaching his opinions on MCC. *See, Booker v. Sumter County Sheriff's Office, 1D14-4812 (1st DCA 2015).* As such, claimant's renewed *Daubert* motion to strike Dr. Pianko's MCC opinions is denied.

Compensability of Claimant's CAD-Rebuttal to 112.18 Presumption-

25. As previously determined herein, I find E/C's burden of proof in rebutting the 112.18 presumption in the instant case is "clear and convincing." Burden of Proof is defined as, "a party's duty to prove a disputed assertion or charge; the burden of proof includes both the

burden of persuasion and the burden of production." Clear and convincing evidence is defined as, "evidence indicating that the thing to be proved is highly probable or reasonably certain." *Black Law Dictionary, 8th edition.* Accordingly, E/C must persuade me that Dr. Pianko's MCC opinion constitutes clear and convincing evidence.

26. I find Dr. Pianko's MCC opinion is neither highly probable nor reasonably certain. Dr. Pianko bases his MCC opinion on his clinical decision as applied to the facts of claimant's circumstances (Pg. 40 of Dr. Pianko's 7/8/15 deposition). Namely, Dr. Pianko explained that development of CAD is a slow process. Because claimant was only a firefighter for seven years with major risk factors consisting of low HDL, elevated LDL, elevated cholesterol, elevated triglyceride, and hypertension stemming back nine years, Dr. Pianko opined the MCC of claimant's CAD was hyperlipidemia and hypertension, pre-existing claimant's work (Pg. 39 of Dr. Pianko's 7/8/15 deposition). While Dr. Pianko's credentials and experience are superb, as are those of Dr. Fernandez, I find the underlying basis of Dr. Pianko's MCC opinion does not qualify as highly probable or reasonably certain evidence in support of E/C's contention (MCC of claimant's CAD is non-industrial cause).

27. The only evidence of pre-existing hypertension and hyperlipidemia in claimant's case is Dr. Mahon's handwritten 8/15/2004 medical note. While claimant was noted having mild hypertension and hyperlipidemia for which medication was prescribed in 2004, *there is no evidence claimant continued suffering from mild hypertension and hyperlipidemia or taking medication for more than the prescribed month in 2004*. In fact, the evidence is to the contrary.

28. Claimant testified, which testimony I accept, after the visit with Dr. Mahon, his medical condition improved and there was no reason to seek further treatment or take medication. He has always followed a healthy diet and exercise regime. He was first diagnosed

with hypertension for which he necessitated medication after the 2012 brush fire. Therefore, with the exception of one month treatment in 2004, I find claimant was exposed to work related stress for just as long a time period he had "borderline" or mild hypertension and hyperlipidemia.

29. While E/C established Dr. Pianko's MCC opinions by a preponderance of the evidence for admissibility purposes (*Daubert standard*), I find same opinions do not constitute clear and convincing evidence in the present case to successfully rebut the 112.18 presumption. Dr. Pianko's testimony of the impact claimant's employment stress had on the CAD was somewhat incongruous. Specifically, Dr. Pianko testified claimant's 7 years employment as a firefighter played a small role (minor risk factor) in the formation of CAD (Pg. 30 of 7/8/15 deposition). Within the same deposition, Dr. Pianko admits even 7 years of undertaking stressful firefighter duties (long hours, long shifts, exposure to fire and worry, and aggravation) would probably be enough to exacerbate risk factors in someone prone to it (Pg. 32 of Dr. Pianko's deposition). Therefore, I find E/C has failed to rebut the 112.18 presumption. I find claimant's CAD/heart disease compensable.

Affirmative Defense-Claimant departed in a material fashion from his prescribed course of treatment from his personal physician-

30. E/C asserts claimant departed from his prescribed course of medication treatment for his hypertension and that said departure, aggravated this CAD/hypertension. I find the evidence does not support E/C's affirmative defense. Rather, I find claimant took the appropriate medications when prescribed and attended yearly examinations. The yearly examinations in 2007, 2009, 2011, and 2012 all diagnose mild hypertension and high cholesterol. In certain years, claimant was instructed to undergo stress tests, which he did. Claimant passed all the physicals and while at times his blood pressure was high even with

medication, there is no evidence claimant was non-compliant with treatment. Dr. Pianko explained that not all blood pressure medication work--sometimes you have to adjust them (Pg. 8 of his 11/12/14 deposition).

Authorization of medical care and testing with cardiologist, primary care physician, and internal medicine specialist

31. Claimant last treated with Dr. Pianko on 10/20/14. At that visit, Dr. Pianko continued claimant on some medications while discontinuing others. He instructed the claimant to follow-up within 3 months (Dr. Pianko's 10/20/14 report). Claimant was evaluated by Dr. Fernandez on 11/20/2014, who opined, claimant needed to follow-up with a cardiologist who can manage his CAD as well as uncontrolled hypertension (Dr. Fernandez' 11/20/14 IME report). I accept the opinions of Drs. Pianko and Fernandez that claimant needs on-going medical treatment by a cardiologist. Given the compensability of claimant's CAD as found herein, I find E/C is responsible for authorizing a cardiologist to provide treatment for claimant's CAD.

Hypertension and Establishment of the Presumption under F.S. 112.18(2002)-

32. Florida Statute §112.18 (2002) hereinafter referred to as the "Heart/Lung Bill" provides in pertinent part:

> "Any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter, caused by tuberculosis, heart disease or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence."

33. Pursuant to the statute and case law, the Claimant must show four elements for the presumption to apply:

1. That the Claimant is a member of the protected class (i.e. firefighter, police officer or correctional officer);

2. That the Claimant developed a protected condition (i.e. hypertension, heart disease, or tuberculosis);
3. That the Claimant underwent a pre-employment physical that failed to reveal evidence of the claimed protected condition(s); and
4. That the protected condition resulted in, temporary, partial, or permanent disability or death (temporary or permanent incapacitation from performing his duties as a law enforcement officer/correctional officer).

34. On 3/6/12, claimant underwent quite a lengthy pre-employment physical process with Miami-Dade County. As part of that process, it was noted claimant was borderline hypertensive. Based on the testing performed as part of the pre-employment physical, Drs. Pianko and Fernandez opined there was medical evidence claimant had hypertension then (Pg. 34 of 11/12/14 deposition of Dr. Pianko and Pg 21 of 2/17/15 deposition of Dr. Fernandez). The opinions of Drs. Pianko and Fernandez are supported by the medical records; and as such, I accept them. I find claimant failed to satisfy the above listed third element of F.S. 112.18. Accordingly, I find the F.S. 112.18 presumption does not apply to claimant's essential hypertension condition.

Major Contributing Cause of Claimant's Essential Hypertension-

35. It is claimant's burden to prove that the major contributing cause of his essential hypertension is work related. Claimant argues his essential hypertension is work related because it was not until 2012, after fighting a very challenging brush fire that his blood pressure needed to be controlled with medication. To that extent, claimant admits to having high blood pressure on one occasion in 2004 and taking medication for one month. However, it was not until 2012, when claimant was prescribed high blood pressure medication again.

36. While claimant's argument has some logic to it, the medical evidence does not support it. Dr. Pianko consistently referred to claimant's hypertension as pre-existing the pre-employment physical. While claimant's work stress was addressed as a risk factor for CAD,

Dr. Pianko was not questioned on the MCC of claimant's essential hypertension. Dr. Fernandez was not questioned either on the MCC of claimant's essential hypertension. Dr. Pianko opined, which opinion I accept, that claimant's essential hypertension is pre-existing claimant's employment with the employer herein. There is no testimony addressing whether claimant's stressful firefighter duties temporarily or permanently aggravated claimant's pre-existing hypertension. As such, I find claimant failed in his burden of proof.

Adjustment of claimant's average weekly wage (AWW)-

37. The only evidence relating to the AWW claim is the pre-trial stipulation (JCC #1). Claimant did not list a specific AWW, only delineating it as "in dispute". On the other hand, E/C lists an AWW of $1,872.68. While claimant testified in final hearing and at his deposition, the AWW issue was not addressed in either. Accordingly, I find the claimant has not satisfied his burden of proof-that an adjustment to the AWW is appropriate. The undersigned must find claimant's AWW is $1,872.68.

Temporary total disability (TTD) and/or Temporary partial disability (TPD) benefits from 12/26/2013 and continuing at correct compensation rate-

38. Dr. Pianko testified, which testimony I accept, claimant was on a no work status after his 12/26/13 heart attack and during all his cardiac rehabilitation care (4 to 5 months). I find the medical evidence supports claimant's entitlement to TTD benefits from 12/26/13 until he returned to work on 5/1/14. There is no evidence claimant suffered any wage loss due to his CAD subsequent to 5/1/14. Accordingly, I find claimant is entitled to TTD benefits from 12/26/13 to 5/1/14 with statutory penalties and interest. However, I find claimant is not entitled to TTD/TPD from 5/2/14 to the date of the hearing.

Payment of impairment income benefits (IIBs) from 8/12/14 (14% Class 1 for hypertensive cardiovascular disease and 10% under Class 1 for cardiomyopathy)-

39. Dr. Fernandez found claimant reached MMI as to his CAD (assigning a 20%PIR) and cardiomyopathy (assigning a 10% PIR) but not essential hypertension. In contrast, Dr. Pianko's opined claimant has not reached MMI yet. I accept the opinions of Dr. Pianko over those of Dr. Fernandez for several reasons. Dr. Pianko has treated the claimant pre and post heart attack. As such, Dr. Pianko provided claimant with treatment for a longer period of time. Dr. Pianko has had the opportunity of following claimant's medical progress and is therefore, in a better position to assess MMI as opposed to Dr. Fernandez, who only evaluated the claimant once. Accordingly, I find the claim for IIBs at this time premature and deny same.

WHEREFORE, IT IS ORDERED:

1. Claim for compensability of disabling cardiovascular arterial disease pursuant to Section 112.18(1) is granted. Claimant CAD is compensable.

2. Claim for compensability of essential hypertension is denied.

3. E/C shall pay claimant temporary total disability (TTD) from 12/26/2013 to 5/1/14 with statutory interest and penalties.

4. Claim for TTD/TPD from 5/2/14 to date of hearing is denied.

5. Claim for adjustment of claimant's average weekly wage (AWW) is denied.

6. E/C shall authorize a cardiologist to provide treatment to the claimant for his CAD.

7. The claims for authorization of primary care physician, and internal medicine specialist are denied.

8. Claim for payment of impairment income benefits (IIBs) from 8/12/14 (14% Class 1 for hypertensive cardiovascular disease and 10% under Class 1 for cardiomyopathy) is denied.

9. Claimant's attorney is entitled to an E/C paid attorney's fees and costs for

securing the benefits herein. Jurisdiction is reserved on the amount of fees and costs for future determination at a fee hearing, in the event the parties are unable to amicably resolve it.

DONE AND E-MAILED TO THE ATTORNEYS OF RECORD AND THE CARRIER, MAILED BY U.S. MAIL TO THE CLAIMANT AND THE EMPLOYER THIS 1ST DAY OF SEPTEMBER OF 2015.

Sylvia Medina-Shore
Judge of Compensation Claims

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