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

Earl Dwight Crews,
Employee/Claimant,

vs.

Florida Department of Corrections/The Division of Risk Management,
Employer/Carrier/Servicing Agent.
_____/

OJCC Case No. 14-022831WRH

Accident date: 10/29/2012

Judge: William R. Holley

FINAL MERITS HEARING ORDER

THIS CAUSE came on for final merits hearing before the undersigned Judge of Compensation Claims on December 14, 2016. The Claimant, Earl Dwight Crews, was present and was represented by Amie Deguzman, Esquire and John Rahaim, Esquire. The employer, Florida Department of Corrections, and the carrier/servicing agent, Division of Risk Management, were represented by William J. Spradley, III, Esquire. For purposes of this order, the employee will be referred to as "Employee" or "Claimant." The employer/carrier/servicing agent will be referred to as "Employer" or "Carrier" or "Employer/Carrier."

This Final Order resolves the petition for benefits e-filed October 2, 2014. All evidence was received and the record was closed on December 15, 2016.

I. ISSUES:

The Claimant sought the following benefits:

1. Compensability of Claimant's Heart disease under F.S. §112.18
2. Permanent Impairment Benefits/Maximum Medical Improvement from 11/19/12 to present and continuing.
3. Medical Authorization of a board certified cardiologist
4. Penalties, Interest

5. Costs, attorney's fees

II. EMPLOYER/CARRIER'S DEFENSES

The Employer/Carrier defended on the following grounds:

1. Petition for benefits filed in November 2014 was first notice of this claim to the Employer/Carrier.

2. Claim not timely reported under 90 day notice requirements.

3. Presumption under Chapter 112.18(1) does not apply or will be rebutted by reverse presumption and/or risk factors.

4. Claimant can not prove his heart condition was caused by employment.

5. No penalties, interest, costs or attorneys fees owed by the employer/carrier.

III. STIPULATIONS

The parties have stipulated to the following:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.

2. Proper venue is Baker County, with the trial to be held in Jacksonville, Duval County, Florida.

3. There was an employee/employer relationship on the date of accident sufficient for this employee to be covered pursuant to Chapter 440 of the Florida Statutes.

4. Timely notice of the accident/injury is in dispute. It was not accepted as being compensable. There was timely notice of the pre-trial conference and the trial.

5. Workers' compensation insurance was in effect on the date of accident.

6. If medical benefits 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.

If Permanent Impairment Rating benefits deemed compensable, the issues of average weekly wage and compensation rate, amount of benefit, penalties and

interest will be handled administratively. Jurisdiction reserved if parties unable to agree.

7. This case is not governed by a managed care arrangement.

8. The following doctors or medical providers are authorized doctors: None,

9. The following body parts/conditions are in dispute: Heart Disease.

10. The petition for benefits and the response to that petition were filed as set forth in the Judge's Exhibits noted herein.

11. The Claimant has established the legal presumption as it relates to the heart disease however the Employer/Carrier is asserting that the evidence rebuts the legal presumption and the reverse legal presumption applies.

12. The parties agree to the alleged date of accident as being October 29, 2012.

IV. WITNESSES AT TRIAL

The following Witnesses testified live**:**

Claimant.

V. DOCUMENTARY EVIDENCE

The following documents were offered into evidence:

Judge's Exhibits:

1. Petition for benefits e-filed 10/02/2014. [D. 1]

2 Response to petition for benefits e-filed 11/12/14. [D. 4]

3. Uniform Statewide Pretrial Stipulation e-filed 2-20-2015. [D. 18]

4. EMA Report; Order Re Claimant's Proposed Redactions to Dr. Deposition entered September 12, 2016 [D. 76]; Supplemental Order Re EMA Appointment entered August 10, 2016 [D. 71]; Final Evidentiary Order Re: Appointment of EMA entered July 8, 2016 [D. 64]; Employer/Carrier's Motion for EMA e-filed May 25, 2016 [57]; Claimant's Response and Objection to EMA e-filed May 26, 2016. [D.59]; EC rebuttal to Claimant's Objection to Motion for EMA e-filed May 27, 2016. [D. 62]

5. Claimant Trial Statement or Brief (for argument only) e-filed December 13, 2016. [D. 92]

6. Employer/Carrier's Trial Statement or Brief (for argument only) e-filed December 12, 2016. [D. 91].

Joint Exhibits:

1. Composite: Dr. Patrick Mattias Deposition taken July 19, 2015 e-filed October 3, 2015. [D. 32-34]; Exhibit 2 was separately filed. [D. 67]

2. Dr. Michael A. Nocero Deposition taken on August 5, 2015 e-filed October 14, 2015. [D. 36 - 41]

3. Deposition of Lieutenant James T. Hurst taken December 12, 2016 e-filed December 13, 2016. [D. 95]

4. Deposition of Lieutenant Tommy Benton taken December 12, 2016 e-filed December 13, 2016. [D. 94]

5. EMA Dr. Steven Borzak deposition transcript taken November 15, 2016 [D. 84]; Video Deposition CD/DVD [Notice is found in D. 85 but the video itself is not in docket.]

   The E/C voiced several objections and or clarifications as to parts of the above EMA opinion on the record. The E/C objected to and moved to strike a portion of the doctor's opinion as to non-compliance as to Claimant's hypertension based upon the doctor's failure to review a chart of blood pressure readings and relying upon incomplete evidence. Upon further review, the objections as to admissibility and or the ore tenus motion to strike this portion of the deposition is hereby denied. The objections as to the weight of the evidence were noted and considered as to the undersigned judge's findings and conclusions herein.

Claimant's Exhibits:

1. Elena Sawning Deposition transcript taken April 29, 2016 e-filed December 12, 2016. [D. 89]

2. Off Work Slip e-filed December 12, 2016. [D. 88]

Employer/Carrier's Exhibits:

1. Composite of Medical Records Medicine Summary Pharmacy Log e-filed December 12, 2016. [D. 90]; Log [D. 46]

2 Composite of Medical Records/Flow Chart from Dr. Herman Downey e-filed December 13, 2016 [D. 93]

3. Deposition of Dana Winkler taken October 12, 2015. [D. 47]

4. Deposition of Dr. Downey taken March 9, 2016 e-filed April 14, 2015. [D. 23-26].

   Claimant objected to the medical opinion testimony as not coming from an authorized physician, IME or EMA. The Claimant did not object to the deposition being used for factual purposes. The Exhibit was admitted for factual purposes only.

5. Claimant's Deposition e-filed October 14, 2016. [D. 35].

6. Composite of Dr Knab medical records; These documents were to be filed by December 15, 2016 but were not e-filed. Thus, the exhibit was not considered or admitted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In making the findings of fact and the conclusions of law in this claim, the undersigned Judge of Compensation Claims (hereinafter "JCC" or "undersigned") has carefully considered and weighed all the evidence presented. The undersigned has observed the candor and demeanor of the witnesses and has attempted to resolve all conflicts in the testimony and evidence presented. Although the undersigned may not have referenced every piece of evidence presented by the parties, the undersigned has fully considered all the factual evidence in arriving at the following conclusions of law.

1. The undersigned JCC has jurisdiction of the subject matter and the parties of this claim. The stipulations of the parties are adopted and shall become part of the findings of facts herein. The documentary exhibits offered by the parties are admitted into evidence and shall become a

part of the record herein.

2. The Claimant is a 65 year old correctional officer who has worked for the Department of Corrections since 1994. At the time of his hire, he took and passed a pre-employment physical and began working at New River Correctional. He was not taking any medications at that time. The New River facility was closed by the Employer and he was transferred to Baker Correctional Institution in 2012 where he is still employed as a corrections officer.

The Claimant first saw a cardiologist in the latter part of 2012. On October 29, 2012 he underwent a heart catheterization while admitted into St. Vincent's Hospital. He was found to be suffering from severe coronary artery disease with a 70% blockage of the right coronary artery and a 90% blockage of the anterior descending coronary artery. He underwent an angioplasty and had two stents placed in his RCA and LAD. He was taken out of work until November 19, 2012. The doctor advised him not to return prior to that date.

The Claimant contacted his Employer before the above procedure to let them know about his medical condition. While recovering afterward, the Claimant contacted his supervisors Lieutenant Benton and Sergeant Hurst to let them know about the stents being placed and that that he was going to be released back to work. When the Claimant returned to work, he provided an off-work slip to Sgt. Hurst. The Claimant testified that Sgt. Hurst did not say anything to him about filing a worker's compensation claim or reporting the incident as a work accident/injury. Sgt. Hurst confirmed this testimony and advised that he was not aware of the Claimant's situation being covered under workers compensation via the heart bill at that time.

Subsequently in 2014 the Claimant was talking with a retired co-worker who told the Claimant about his heart condition possibly being covered under workers compensation. The Claimant credibly testified that he was unaware of the heart bill or the ability to file a workers compensation claim for his injury prior to this conversation. Shortly thereafter, the Claimant met with his current attorney and a Petition for Benefits ("PFB") on October 2, 2014 seeking compensability of his hypertension and heart disease and impairment benefits for those conditions. The Carrier received the Notice of Injury on November 2014. The Carrier responded to the Petition on November 12, 2014 denying the workers compensation case raising the statute of limitations and stating that no documents supported the request for impairment benefits.

3. The Claimant's family history provides that the Claimant's father (who is deceased) had hypertension and coronary artery disease/heart blockage. His mother is diabetic. While working as a corrections officer in the early 2000s, he first developed high blood pressure, although it was not disabling at that time. Dr. Downing, claimant's personal doctor, asked the Claimant to lose weight and reduce salt intake on several occasions. The Claimant was also prescribed medication for high blood pressure from at least 2004 to 2011. Claimant had several blood pressure readings done from 2000 forward where there were timeframes that he had blood pressure readings higher than 140/90 and time periods where it was lower. The Employer/Carrier submitted a pharmacy log utilizing such records within their possession to calculate time periods between filling blood pressure medications. This flow chart indicated that there were times the Claimant was not taking medication. There were also a couple of medical records where the doctor noted that the Claimant was not taking his medication such as June 9, 2009 and September 5, 2010. However, there was a consultation report "History And Physical" dated September 9, 2010 whereby the Claimant was described as being in good health despite having a gall bladder attack. The report also indicated that the Claimant had a distant history of hypertension but was not on any medication as his blood pressures have been normal without it. Despite a blood pressure reading of 154 / 84, Dr. Davenport noted that "[t]his is a healthy appearing 59 year-old gentlemen with no significant medical history except for distant history of hypertension which is obviously controlled without medication." In Claimant's medical records, there were also records demonstrating prescriptions/tests performed for cholesterol and glucose levels which are discussed further in this Order herein.

4. At the request of the Employer/Carrier, Dr. Michael Nocero, cardiologist, performed an independent medical examination ("IME") on the Claimant on March 17, 2015. On that visit, the doctor noted the Claimant's blood pressure was high at 150/80. The doctor noted that the rest of exam, including the exam of the heart, was normal. An EKG was done that came back normal. The doctor's impressions after reviewing the prior medical records was that the Claimant had coronary artery disease that necessitated in 2012, angioplasty and stenting of two

of the three main coronary arteries. The doctor also confirmed the essential hypertension, the fact that he had dyslipidemia, including a low HDL with his cholesterol. The doctor also found the Claimant to be diabetic as of June 2012 and having a permanent hypertensive condition before the date of the accident. As to the CAD, Dr. Nocero opined that the Claimant had multiple risk factors including diabetes melitis Type II, his dyslipidemia and his hypertension. Lower on the list of risk factors, the doctor opined that the Claimant had a family history of CAD via his father. The doctor opined that the combination of these four factors would be the major contributing cause for the Claimant's CAD to a reasonable medical probability. The doctor opined that he subscribed to the Framingham Heart Study view that the more risk factors a person has, it increases the chances of probability that a person will develop CAD as a result. The doctor also found that the Claimant had not followed his doctors' instructions over the years as to losing weight, going on a low sodium diet and not always taking his medications. Dr. Nocero testified that this non-compliance contributed to Claimant's CAD and the progression and speed at which it progressed as well as to the Claimant's subsequent needs for the stents done in 2012. However, the doctor noted that he did not see any documentation that the Claimant had suffered any damage to the left ventricle prior to or at the time of the catherization done in October of 2012. The doctor also acknowledged that the Claimant's hypertension would not be considered stage 2 which is a score greater than 160.

The doctor opined that the Claimant was at medical medical improvement ("MMI") as of the visit and would be assigned a 15 percent for category heart disease Class 2 based on the fact that he did not have any end organ damage to the main pumping chamber of the heart, the left ventricle, which was asymptomatic. The doctor also found that the Claimant had a myocardial perfusion imaging study recently done that showed two of the three main coronary arteries were patent and supplying adequate amounts of blood flow to his heart.

5. Dr. Patrick Mathias, cardiologist, performed an IME evaluation on the Claimant on June 18, 2015. At the evaluation, the Claimant advised the doctor that he had a history of significant chest discomfort which got better after receiving the stents. The Claimant reported that he was feeling well and asymptomatic. Dr. Mathias diagnosed the Claimant with essential arterial hypertension, chronic kidney disease, dyslipidemia (elevated cholesterol), glucose intolerance due to his blood sugars being

a little high and a history of gout and coronary artery disease with stenting of his left anterior descending and right coronary arteries.

Ultimately, Dr. Mattias testified that he could not provide an opinion on causation as the cause was unknown for both the hypertension and CAD. Dr. Mattias agreed that the Claimant's family history, and psychosocial stress as a corrections officer for 21 years would constitute risk factors for hypertension. Risk factors for CAD included uncontrolled hypertension, high cholesterol (hyperlipidemia), family history and glucose intolerance.[1] The doctor distinguished between causative factors and risk factors by stating that "a cause is a condition that inevitably results in [the] development of disease" whereas a risk factor "increases the statistical probability that an individual is going to get the condition, but does not assure that the patient is going to get the condition." The doctor agreed that the more risk factors an individual has, the higher a person's statistical risk. Dr. Mattias was not able to assign particular percentages to the Claimant's individual risk factors. The doctor opined that even if a patient has all five (5) risk factors for CAD that the combination would never reach 50% as a cause but rather maybe 20% to 25%. As to reducing salt intake, the doctor did not find this to be a factor according to the medical literature and or epidemiological studies. The doctor opined that the Claimant did not have diabetes as the Claimant's blood sugar levels were only slightly high. The doctor acknowledged that the Framingham study indicated that diabetes was a risk factor for CAD but did not believe that glucose intolerance had been well quantified enough in the medical literature to list it as a risk factor.[2] The doctor acknowledged that the Claimant prescribed medications for hypertension and high cholesterol over several years.

The doctor placed him at MMI for both the CAD and hypertension on June 18, 2015 and assigned him an 18% rating for the coronary artery disease post stenting and a 33% rating for essential/arterial hypertension. In using the Impairment Guidelines combined rating chart he determined the combined rating is 45% within a reasonable degree of medical certainty. In coming up with his diagnosis and impairment ratings, Dr. Mathias relied on the Florida Impairment Guidelines and the Claimant's medical records. It was also his belief that the Claimant had kidney disease which impacted the impairment rating (Class 3) as it was the doctor's belief that Claimant's

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[1] Dr. Mattias also acknowledged that the Interheart study listed abdominal obesity as a risk factor for CAD but indicated it was not a risk factor per the Framingham study. The doctor did not however find Claimant's weight of 187 pounds and BMI of 28 to be considered obese but rather mildly overweight.

[2] Also Dr. Mattias noted that the Metformin medication milligram dose of 500 was a very low dose and/or a "beginning dose" for treating diabetes or pre-diabetes.

hypertension caused the kidney condition. Without the kidney condition, the Claimant would fall into a Class 1 with an 8 to 10 percent rating.

6. After finding a medical conflict between the above two IMEs, the undersigned judge appointed Dr. Borzak, cardiologist, as the Expert Medical Advisor ("EMA"). In his EMA report dated September 22, 2016, Dr. Borzak listed Claimant's conditions as being coronary artery disease and essential hypertension. With respect to the question as to whether Claimant had diabetes versus impaired glucose tolerance, the doctor deferred to an endocrinologist but commented on the fact that the degree of impaired glucose was mild and expressed criticism over the America Diabetes Association definition. As to causation, Dr. Borzak opined that there were no known major contributing cause(s) as to Claimant's hypertension and/or CAD. The doctor indicated in his EMA report that contributing risk factors for the CAD included hypertension, an unfavorable lipid profile though not conventionally overt hypercholesterolemia and potential contribution from job stress. As well, Dr. Borzak did not find a strong family history and noted again that the Claimant had questionable or borderline diabetes. Dr. Borzak ultimately opined that there was no known cause for the Claimant's coronary artery disease and that the Claimant's risk factors were contributory, but not causative, and even taken together were not a major contributing cause.

Additionally, The EMA was asked his opinion on whether the Claimant departed in a material fashion from the prescribed course of treatment and if said departure demonstrated to have resulted in a significant aggravation of the Claimant's CAD resulting in disability or increasing the disability or need for medical treatment. In the report, the doctor opined that there was not such a departure and that the Claimant was compliant with medications by his history and records. The doctor also noted that there was nothing to suggest that a departure contributed to the Claimant's cardiac diagnoses.

As to the permanent impairment rating, Dr. Borzak opined that the Claimant should be assigned an 18% permanent impairment rating for Claimant's CAD condition. In his report, he stated: "For coronary heart disease, the claimant is class 2, since class 1 is reserved for insignificant coronary artery disease. He is not class 3 since he is asymptomatic with an excellent aerobic capacity and has normal LV function. Since the claimant had 2 vessel disease involving the LAD, he cannot be at the bottom of the scale, but he cannot be at the top of the scale since

the course has been uncomplicated and he has done extremely well without the need for further procedures. He is rated 18%."

On November 15, 2016, the parties took Dr. Borzak's deposition. The E/C asked the doctor to comment on the history of Claimants' blood pressure numbers from 2004 to 2011. The doctor advised that he did not see any significant differences as to the numbers in the medical records before and after October 29, 2012 as found in the EMA composite. The E/C provided a pharmacy log to the doctor for a time period of April 19, 2004 through April 27, 2011. This document had not been previously presented to the EMA as part of the EMA composite. The E/C advised the doctor per the logs that the Claimant had gone without medication for 876 days and was only taking them two (2) out of the (7) seven year period. In response, the doctor agreed that if that was the case then it would constitute a pattern of non-compliance. However, the doctor indicated that the numbers that were contained in the medical records demonstrated that the Claimant's blood pressure was not badly controlled. Despite being confronted with medical history and reports prior to 2012, the doctor did not find that the purported non-compliance was the major contributing cause but agreed that it could have contributed to Claimant's condition. The doctor also explained that pharmacy records were challenging to work with due to people stopping medications, doctors modifying medications, people running out of medications, forgetting or not realizing they are supposed to refill medicines, having an adverse reaction and that medical records do not always document the above despite being discussed in the exam room. As to various blood pressure readings in the past, the doctor agreed that some of the numbers were elevated while some were well controlled. The EMA further indicated that the elevated numbers would be a risk factor to an extent. The doctor did not agree with Dr. Nocero that the Claimant's family history would constitute a risk factor. The doctor stated that family history of CAD as a risk factor really meant CAD found by family members age 50 or earlier which did not apply to the Claimant's father. As to diabetes, the EMA repeated that Claimant's condition was a weak risk factor due to the diabetes being mild at best. The doctor more importantly noted that the lack of severity and or duration (controlled or uncontrolled) of the diabetes and or hypertension did not explain Claimant's CAD.[3] The EMA indicated that "[s]o his pattern of

[3] The doctor reviewed and relied on at least the following blood pressure readings in reaching this opinion: 140/85 in October of 2005; 132/80 in September of 2010; 128/80 in October of 2010; 128/62 in October of 2012; 118/60 in November of 2012; 118/69 in January of 2013; 156/76 in September 2013; 120/64 in June of 2013. The E/C objected to this part of the deposition testimony as being inconsistent with Dr. Downy's chart of blood pressure which indicated several additional "abnormal blood pressure readings." The EMA was not directly confronted with these specific readings during his deposition. Despite the objection, the undersigned finds the EMA doctor's

compliance may not have been perfect or may have even been poor, but his blood pressure was not severely uncontrolled." Similarly, the doctor found the Claimant's cholesterol to be a weak risk factor due to it not being high with a score of 113 and/or a 1 low HTL. Once again, the doctor noted that even if the Claimant had not taken his medicine for the cholesterol all the time, the Claimant's "cholesterol profile was one that suggested fairly adequate levels of treatment with an LDL below 70" and that the Claimant's cholesterol profile was not "terrible" or "horribly uncontrolled." The EMA agreed that the Claimant's failure to follow Dr. Downy's advice on losing weight, limiting salt intake and or diet contributed to developing CAD to a minor extent. Despite all of the above combined minor risk factors, the EMA did not find that the group constituted major contributing cause for Claimant's CAD. Finally, Dr. Borzak reaffirmed his opinion as to Claimant's permanent impairment rating and reasoning.

7. The Employer/Carrier has argued that the Claimant failed to timely report the claim under a ninety (90) day notice requirement pursuant to Sections 440.151(6) and 440.185, F.S. The facts demonstrate that the Claimant did notify his supervisors of his condition and his need of a heart catheterization within ninety (90) days of procedure. The undersigned finds that the Claimant testified credibly that he was not aware of the heart bill and/or that his heart condition could possibly covered under workers compensation. The evidence also demonstrates that Claimant's supervisors were not aware of the Heart Bill at the time of this hospitalization. Thus, the Employer had actual knowledge of the injury itself even if its supervisors were unaware of the law. Additionally, there was no evidence presented that the Employer put its employees on notice of the notice provision. Therefore, the Claimant has satisfied the reporting requirement and the undersigned respectfully rejects this defense.

8. Florida Statutes Section 112.18(1) sets forth the required elements for applying and establishing the legal presumption in the case at bar (hereinafter referred to as "legal presumption "). The Supreme Court in Caldwell v. Division of Retirement, 372 So. 2d 438, 441 (Fla. 1979) held this legal presumption relieves firemen and police of the necessity of proving causation of

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testimony persuasive that the Claimant's blood pressure readings were not shown to be severely uncontrolled. The E/C referred to these selected readings as "cherry picking" but these readings do show that the Claimant's hypertension was not consistently abnormal from 2004 to 2011 as the E/C has contended.

the disease and "cast on the employer the burden of persuading the trier of fact that the disease was caused by a non-occupational related agent." To be entitled to such presumption, a claimant must prove each of the four (4) elements: (1) he/she is a member of the protected class; (2) he/she passed a pre-employment physical indicating the disease was not then present; (3) he/she has since such time been diagnosed with the disease; and (4) the disease has resulted in disability. The Employer/Carrier has stipulated that the Claimant meets the requirements of the legal presumption per F.S. 112.18(1). Thus, the Claimant is not required to prove his heart condition was caused by his employment unless the legal presumption is rebutted or reversed by evidence submitted by the Employer/Carrier.

9. The Employer/Carrier has the burden of showing via the medical evidence that the Claimant's employment was not the major contributing cause of the heart disease. Fuller v. Okaloosa Correctional Inst., 22 So. 3d 803 (Fla. 1st DCA 2009). In the instant case, the Employer/Carrier is also required to rebut the presumption of correctness by the EMA by clear and convincing evidence. Fitzgerald v. Osceola County Sch. Bd., 974 So. 2d 1161 (Fla. 1st DCA 2008). In either event, the undersigned finds that the Employer/Carrier has not met its burden in establishing the reverse presumption, overcoming the legal presumption or effectively negating the EMA opinion as to the issues involved regarding the compensability (and need for medical treatment) for Claimants' CAD. The undersigned finds the EMA doctor's opinion that all of Claimant's risk factors were contributory but not the major contributing cause for the CAD disease to be credible, reasonable and persuasive. In contrast, Dr. Nocero's opinion regarding causation was not sufficiently supported by objective evidence as to how the risk factors were specific causes as to the Claimant's actual CAD condition. Moreover, even accepting the E/C's pharmacy logs and Dr Downy's chart/records of Claimant's non-compliance, Dr. Borzak persuasively testified that this evidence would not constitute a sufficient departure in a material fashion in light of the fact that Claimant's various conditions (ie hypertension, diabetes, cholesterol) were not severely uncontrolled. Finally, there was insufficient evidence (objective or otherwise) demonstrating how the Claimant's non-compliance resulted in a significant aggravation of his CAD. Therefore the claim for CAD is compensable and authorized medical treatment is hereby awarded.

10. Dr. Borzak as the EMA opined that the Claimant should be assigned a 18% permanent impairment rating for Claimant's CAD condition. As previously noted, the doctor disagreed with Dr. Mattias' rating. The undersigned does not find that Dr. Mattias' opinion regarding the impairment rating for CAD to be sufficiently persuasive as to being able to overcome Dr. Borzak's medical opinion on this matter. Therefore, the Claimant is entitled to permanent impairment benefits based upon a 18% rating along with penalties and interest. The parties stipulated to administratively calculating the amount of said benefits, penalties and interest and the undersigned judge reserved jurisdiction in the event that the amounts cannot be agreed upon.

11. The claim for attorney's fees and costs at the expense of the Employer is hereby granted. The Employer shall pay a reasonable attorney's fee and taxable costs to the claimant's attorney for the benefits being awarded by this Compensation Order. Jurisdiction is hereby reserved to determine the amount thereof if the parties are unable to amicably resolve this issue.

WHEREFORE, it is CONSIDERED, ORDERED and **ADJUDGED** that:

1. The claim for compensability as to Claimant's CAD and authorized medical care as indicated herein is hereby awarded.

2. The Claim for PPD benefits in the amount of 18% is hereby awarded along with penalties and interest. The parties stipulated to administratively calculating the amount of said benefits, penalties and interest and the undersigned judge reserved jurisdiction in the event that the amounts cannot be agreed upon

3. The Claim for entitlement to costs of litigation and reasonable attorney fees paid by the Employer/Carrier is hereby awarded. Jurisdiction is reserved in the event that the parties are unable to determine the above amounts.

DONE AND SERVED this 21st day of January, 2016, in Jacksonville, Duval County, Florida.

William Ray Holley

William R. Holley
Judge of Compensation Claims

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