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

Walter Roberts,
Employee/Claimant,

vs.

City of Jacksonville/City of Jacksonville Risk Management,
Employer/Carrier/Servicing Agent.
_____/

OJCC Case No. 13-011274WRH

Accident date: 12/01/2011

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 13, 2016. The Claimant, Walter Roberts, was present and was represented by John Rahaim, Esquire. The employer, City of Jacksonville, and the carrier/servicing agent, City of Jacksonville Risk Management, were represented by Michael Arington, Esquire and Alexander Makofka, 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 August 15, 2014. All evidence was received and the record was closed on December 13, 2016.

I. ISSUES:

The Claimant sought the following benefits:

1. Compensability of Claimant's Hypertension issues pursuant 112.18.

2. Authorization of and an appointment with a primary care provider or in the alternative a board certified cardiologist.

3. Payment of 6 medical bills attached to the petition for benefits.

4. Attorney's Fees

5. Penalties and interest

6. Costs

II. EMPLOYER/CARRIER'S DEFENSES

The Employer/Carrier defended on the following grounds**:**

1. Compensability of hypertension. The Employer denied compensability of hypertension, asserting the statutory presumption did not apply because the condition did not disable the Claimant on the accident date and because the pre-employment physician revealed evidence of the condition. The Employer also denied the demands because there were non-work causes for the condition and because Claimant departed from a course of treatment prescribed by his physicians that resulted in an increased need for treatment or an increased disability from hypertension.

2. Medical care with cardiologist. The Employer denied it because it denied compensability.

3. Past medical bills. The Employer denied it because it denied compensability.

4. Penalties and interest. The Employer denied it as not due owed.

5. Fees and costs. The Employer denied them as not due or owed.

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 Duval 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. Notice of the accident/injury was timely given. 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.

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

8. The following doctors or medical providers are authorized doctors:
Dr. Dietzius is the IME for Employer/Carrier; Dr. Mathias is the IME for Claimant.

9. The following body parts/condition are at issue: hypertension.

10. The petition for benefits and the response to that petition in docket #6 were filed as set forth in the Judge's Exhibits noted herein.

11. Under the element of "Covered Employee" per the statutory presumption under F.S. 112.18, the Employer/Carrier agrees the Claimant meets this requirement for hypertension.

IV. WITNESSES AT TRIAL

The following Witnesses testified live**:**

1. Claimant.

V. DOCUMENTARY EVIDENCE

The following documents were offered into evidence:

Judge's Exhibits:

1. Petition for benefits e-filed August 15, 2014 with exhibits. [D. 32 and 33]

2. Response to PFB e-filed June 4, 2013. [D. 6]

3. Uniform Statewide Pretrial Stipulation e-filed January 15, 2015. [D. 43]

4. Pretrial Order entered January 18, 2015. [D. 44]

5. Employee's Trial Statement or Brief (for argument only) e-filed December 9, 2016. [D. 80]

6. Employer/Carrier's Trial Statement or Brief (for argument only) e-filed December 9, 2016. [D. 81].

Joint Exhibits:

1. Dr. Dietzius deposition taken August 18, 2016 and exhibits. [D. 75]

Claimant's Exhibits:

1. Dr. Matthias Deposition Transcript and attachments taken March 3, 2016. [D. 65]

2. Dr. Mathias update deposition taken May 24, 2016 and exhibits [D. 74]

Employer/Carrier's Exhibits:

1. Deposition and IME report of Dr. Harold Dietzius taken August 27, 2015 with exhibits. [D. 67]

2. Claimant deposition transcript taken April 27, 2015 with exhibits. [D. 70]

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 47 year old law enforcement officer with the Jacksonville Sheriff's Office ("Employer"). He began working with the Employer on June 19, 1995 and is still employed. On the morning of December 1, 2011, the Claimant was not feeling well. He felt a squeeze in his chest. He went ahead to the courthouse and while there at work he started feeling worse. The Claimant was there to assist with a DUI jury trial. Eventually he had a fellow officer call EMS. He was transported via ambulance to a fire station where his blood pressures were very high. In fact, all three of the diastolic readings were over 90 mm Hg. The fire station gave him nitroglycerin and aspirin. He was then taken to the Baptist Hospital for a cardiac workup and 24-hour observation where he had several tests done. One of the tests revealed the presence of mild to moderate left ventricular hypertrophy. He was released from the hospital on December 2, 2011 and was prescribed Lipitor, Lisinopril.

3. At the time of his initial hire in 1995, the Claimant testified that he underwent a pre-employment physical which he passed. He was not aware of any abnormalities or high blood pressure readings. He was also qualified for the pension. The Claimant was not on any medications or had any high blood pressure readings prior to the time he was hired. The pre-employment form itself was dated March 15, 1995. The form was marked "yes" for the questions posed "Have you or anyone in your family (blood relatives) ever had High Blood Pressure" and the same for "Other Diseases." Subsequently the Claimant indicated his father had high blood pressure. When asked to advise as to other health conditions, the Claimant did not indicate any heart trouble, palpitation or pounding of the heart. The form did indicate a blood pressure reading of 120 / 92. Despite this reading, the form was stamped by the doctor "On the basis of physical examination in my opinion, currently the candidate is able to perform the job and does not pose a threat to self or other under normal working conditions." In the Medical Questionnaire for Respirator Users, the Claimant marked "No" next to the question if he had or has High Blood Pressure.

4. In 2005, the Claimant underwent a heart catheterization with Dr. Baker and Dr. Gilmore due to atypical angina symptoms where the Claimant had a 10 percent stenosis in his LAD, left circumflex and RCA which are the three major heart arteries. The Claimant reported that the doctor saw some blockage of his coronary artery but that the doctor was not too worried about it. Prior to 2005, the Claimant did not have any blood pressure issues. The Claimant was prescribed Lisinopril and Lipitor in 2005.

Since that time, the Claimant stated that he took these medications for the most part except when a few years ago he had lost 95 pounds around 2011 and stopped taking the medications for a few months with permission by his doctor. The records indicate there were a couple of instances where the Claimant did not take the medications on April 18, 2007, October 5, 2010 and on January 24, 2011. The doctor observed in the April 18, 2007 note that the Claimant was not taking his Lisinopril or Lipitor and had a blood pressure reading on 145/98. There was also a Memorial hospital visit in October 5, 2010 where the Claimant was admitted for chest pain. In the history and physical section, the hospital reported that the Claimant had stopped taking his medications and registered a blood pressure reading of 147/76. After this visit, the Claimant was seen by Dr. Kanter on a couple of occasions where he had blood pressure readings of 142/90 (October 14, 2010) and 123/72 (October 28, 2010). On January 24, 2011, the Doctor noted that the Claimant had missed the last three appointments and advised that the Claimant only takes his medication when he remembers. The blood pressure reading at that time was 165/90. The Claimant stated in December 2010 he had a close family member die which was the reason for not attending appointments. After the January 2011 appointment, the Claimant stopped treating with Dr. Kanter and went to his primary care doctor instead where he obtained blood pressure medications at that time.

In 2012, the Claimant separated from his wife which was mentioned in the medical notes as being stressful. The Claimant experienced episodes of anxiety or panic which he was prescribed medication. Since that time, the Claimant and his wife has reconciled and there was no additional evidence of these panic episodes. In 2013, the Claimant was severely injured in a separate accident involving a motor bike where unrelated litigation is pending. He gained several pounds as a result of a broken leg.

5. Dr. Mattias, cardiologist, diagnosed the Claimant as having essential hypertension at the time of the hospital visit on December 1, 2011 where the Claimant had multiple elevated blood pressures of 159 over 91, 140 over 102, and 151 over 105.[1] The doctor noted that he would have taken the Claimant off of work a few days to make sure his blood pressures had normalized and were under control before returning to work. The doctor opined that Claimant's essential hypertension was "high blood pressure for which a cause was not evident." In reaching this determination, Dr. Mattias further referred to Robert Koch's postulates where the determination of something as being a cause "should inevitably result in [the] developing of the condition and there should be a demonstrated connection between the proposed cause and the developmental disease." He identified risk factors for the Claimant such as Claimant being overweight and Claimant's job as a police officer. However, the doctor did not find these risk factors to be causes and distinguished as such when he testified that:

> A risk factor is a condition that is related to a statistically higher incidence of a disease. A cause is a condition that is inevitably resulted in – results in the development of a disease. A patient can have risk factors and can never develop the disease.

As to the pre-employment physical performed in 1995, the doctor noted that there was only one reading where the blood pressure was recorded at 120 over 92. The doctor opined that "a single reading of two-millimeters above 90 in an office setting where the individual is having a physical examination is not an indication of hypertension." The doctor further explained "white coat hypertension" where an individual's blood pressure goes up just because anxiety when seeing a doctor. The doctor distinguished between a single isolated reading of 92 versus several readings as being evidence for essential hypertension.

6. Dr. Dietzius, cardiologist, opined that the Claimant had essential hypertension during the timeframe around November 29, 2011. He observed records from the emergency medical

[1] The depositions and or evidence can be somewhat confusing as the date of accident is sometimes referred to November 29, 2011. For purposes of this hearing, December 1, 2011 was used to describe the incident in question. There was also some confusion between the instant date and another hospitalization that took place in 2012.

response team that indicated that the Claimant's blood pressure was elevated. The doctor noted several blood pressure readings that exceeded 140/90 at the hospital and by Fire Rescue/Ambulance records with the maximum blood pressure reading as being 202/112. The doctor noted that the Claimant was given nitroglycerin tables and a normal saline to treat chest pain as well as significant hypertension. The doctor noted that with essential hypertension there typically is not a direct cause in 95 percent of the situations but instead noted that there were risk factor that increase the risk of developing hypertension. Risk factors included: family history of heart disease, obesity going back to 2005, and non-compliance with medications (Lisinopril and Lipitor) in 2007 and again in January of 2011 per Dr. Kanter.[2] The doctor indicated that during the Claimant's hospitalization and echocardiogram the Claimant exhibited symptoms of left ventricular hypertrophy. The test demonstrated a thickness of the left ventricle heart muscle around 1.7 centimeters versus a normal measurement of 1.1 centimeters or less. The doctor described it as being mild to moderate left ventricular hypertrophy but no other significant findings from the remainder of the tests done. Dr. Dietzius ultimately opined that the Claimant's initial diagnosis of hypertension in 2005 was caused by risk factors of obesity and family history within a reasonable degree of medical probability. As to the December 1, 2011 date of diagnosis for hypertension, the doctor noted the additional cause/risk factor of non-compliance with medications which "potentially could increase the risk of having exacerbations of hypertensive episodes." The doctor opined that more likely than not that the cause of the left ventricular hypertrophy would have been elevated blood pressure, noncontrolled hypertension. Then doctor further advised that the trigger for the Claimant's hypertension in December 2011 was more likely than not the noncompliance.

On cross examination, the doctor was shown Claimant's blood pressure readings from the December 2011 episode and indicated that an individual could not work as a police officer with such readings and would need to have medical treatment. The doctor noted that the emergency responders gave the Claimant aspirin and two sublingual nitroglycerines to bring the blood pressure down and to improve angina-type pain. Despite these items, the Claimants' blood

[2] The doctor noted that Lisinopril works as an anti-tensive receptor and/or an angiotensin converting enzyme inhibitor. The enzyme helps regulate the kidneys and regulate blood pressure which dampens down blood pressure responses.

pressure was still high when he arrived at the hospital and per Dr. Dietzius the Claimant needed treatment. As to whether the non-compliance triggered the December 2011 episode, the doctor indicated that he could not accurately opine as to that matter but instead advised "all I can speculate it that Dr. Kanter's note said he was not compliant. . . I don't know what happened in those next 11 months of why his –what his blood pressure was doing."

Dr. Dietzius was asked to review the pre-employment physical. He opined that the Claimant diastolic reading of 92 would be consistent with hypertension but advised that a person could not make any assumptions on a onetime reading. The doctor stated that it was his opinion that the one reading did constitute as "evidence of diastolic hypertension."

7. F. S. 112.18(1)(2009) 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 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 concedes the Claimant is a member of a covered class as he was a certified police officer on the alleged date of accident. During closing arguments, the Employer/Carrier also conceded that the Claimant had hypertension on December 1, 2011, which is a covered condition.

The first of the two remaining elements that must be determined involves whether the Claimant passed a pre-employment physical "which examination failed to reveal any evidence of any such condition [which is hypertension in this case]." F.S. 112.18(1). The facts are undisputed that the Claimant had one (1) blood pressure reading of 120 / 92 which slightly exceeded the diastolic rating of 90. However, the doctor conducting the pre-employment physical passed the Claimant and the Claimant was hired as a police officer. Other than noting the reading on the form, the doctor did not indicate that the reading was a problem. The IME

doctors have all agreed that a proper hypertension diagnosis requires more than one high blood pressure reading. The doctors differed however on their interpretation of the semantics of the legal definition of evidence. After much deliberation, the undersigned is compelled to find that "evidence of hypertension" and "evidence of an elevated blood pressure reading" are not one and the same. In the instant case, there is certainly evidence of an elevated blood pressure reading whether it was caused by "white coat syndrome," a faulty reading or for whatever reason it may have been. As a medical policy and/or practice, the doctors require two or more readings before forming a diagnosis of hypertension to avoid a misdiagnosis. Therefore, the undersigned incorporates this reasoning in determining whether there is any evidence of hypertension which under the instant circumstances I find there is not.

The remaining element is whether Claimant's hypertension has resulted in a disability. F.S. Section 440.151(3) defines "disablement" as a disability which is described in F.S. Section 440.02(13) whereby the term is defined as "the incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury." A disability occurs when a claimant becomes actually incapacitated, partially or totally, from performing his employment. See City of Mary Esther v. McArtor, 902 So. 2d 942, 944 (Fla. 1st DCA 2005); See also Jacksonville Sheriff's Office v. Shacklett, 15 So.3d 859 (Fla. 1st DCA 2009). In Bivens v. City of Lakeland, 993 So. 2d 1100 (Fla. 1st DCA 2008), the District Court of Appeal held that the presumption afforded by Section 112.18 is "only applicable when a claimant's ... hypertension result[s] in total or partial disability or death. Id. at 1102. However, the First District Court of Appeal provided additional direction as to establishing disability by holding that "there [is] a space for a claimant whose body might retain the physical strength and coordination to perform his job duties for a time, but who has been officially advised by his doctor – via medical work restrictions – to forbear from engaging in his work so as to avoid potential further injury or death due to his . . . hypertension." Rocha v. City of Tampa, 100 So. 3d 138 (Fla. 1st DCA 2012).

Both doctors indicated that they would take the Claimant off work until the Claimant's blood pressure normalized. Dr. Dietzius agreed with Dr. Mattias that the Claimant would not be able to work as a police officer with the high blood pressure readings but instead needed to undergo medical treatment. The objective findings relied upon by the doctors were the high

blood pressure readings which exceeded 140/90. Based on the above facts, the undersigned finds that the disability element has been met

Therefore, the Claimant meets the statutory presumption and the burden shifts to the Employer/Carrier to rebut the legal presumption.

8. The Employer/Carrier has asserted that the evidence as presented effectively rebuts the presumption with competent evidence of nonwork related causes of a covered condition. As well, they argue that the Claimant departed from a course of treatment prescribed by his physicians that resulted in an increased need for treatment or an increased disability from hypertension. The undersigned respectfully disagrees for the reasons set forth below.

As previously noted, Dr. Mattias opined that the Claimant had risk factors as to hypertension but did not find such factors to rise to the level of causation. In contrast, Dr. Dietzius listed obesity, family history, and/or lack of compliance with medication/treatment as risk factors that when combined constituted causation. The undersigned found Dr. Mattias' opinion on risk factors versus causes to be more persuasive than Dr. Dietzius' opinion as to the risk factors rising to the level of causation. In either of his depositions, Dr. Dietzius did not sufficiently explain (or show through objective evidence) how these risk factors (either individually or when combined) developed to the level of being considered causes. Although Dr. Dietzius assigned a 90% basis of finding causation due to Claimant's obesity versus other risk factors, the doctor acknowledged on cross examination that Claimant's statistics of weight (208), height (5'8") and BMI rating (29) at the time of the December 2011 episode indicated that the Claimant was overweight as opposed to obese. This difference was not addressed in either of Dr. Dietzius depositions nor was there any explanation as to what impact if any this make on the doctor's analysis. It was also noted that Dr. Dietzius did not assign a percentage value or consider the risk factor of the stress from the Claimant's position as a first responder. As to whether the non-compliance triggered the December 2011 episode, Dr. Dietzius indicated on cross examination that he could not accurately opine as to that matter nor did he refer to any objective evidence demonstrating how, if any, Claimant's failure to take medications prior to January 2011 weighed into the causation analysis for hypertension. Thus, the Employer/Carrier has failed to rebut the presumption and the hypertension claim is deemed compensable.

9. Resultantly, the undersigned finds that Claimant is entitled to authorization of and an appointment with a primary care provider or in the alternative a board-certified cardiologist. As to the medical bills attached to the PFB, the parties previously agreed that the exact amounts payable to health care providers will be handled administratively and medical bills need not be placed into evidence at trial.

10. No evidence of penalties or interest was provided and therefore as such is not awarded unless such items are indicated with the administrative handling of the medical bills. 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** as follows:

1. The claims for compensability of the hypertension, authorized medical care as indicated herein, compensability of medical bills (pursuant to the stipulation of administratively handling said bills including penalties and interest if applicable) is hereby awarded. Otherwise the claim for penalties or interest is denied unless such items are indicated with the administrative handling of the medical bills

2. The Claim for entitlement to costs of litigation and reasonable attorney fees is hereby awarded. Jurisdiction is reserved in the event that the parties are unable to determine the amount

DONE AND ORDERED this 2nd day of January, 2017, in Jacksonville, Duval County, Florida.

William Ray Holley

William R. Holley
Judge of Compensation Claims
Division of Administrative Hearings

Office of the Judges of Compensation Claims
Jacksonville District Office
1809 Art Museum Drive, Suite 200
Jacksonville, Florida 32207-2840
(904)348-2790
www.fljcc.org

COPIES FURNISHED:

John J. Rahaim, II, Attorney/Partner/Mr.
Law Offices of John J Rahaim II
4811 Beach Blvd, Suite 204
Jacksonville, FL 32207
jrahaim@jaxlegalhelp.com,jalbano@jaxlegalhelp.com

Michael J. Arington, Attorney
Eraclides, Gelman, Hall, Indek, Goodman & Waters
4811 Atlantic Blvd
Jacksonville, FL 32207
MArington@eraclides.com,nmitchell@eraclides.com