STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF JUDGES OF COMPENSATION CLAIMS
DAYTONA BEACH DISTRICT OFFICE

GARY SEDACCA,	:	OJCC No.: 03-033079DYB
Employee/Claimant,	:	D/A: 6/12/2003
v.	:	
CITY OF PORT ORANGE and PREFERRED GOVERNMENTAL CLAIM SOLUTIONS,	:	
Employer/Servicing Agent.	:	

Richard A. Sicking, Esquire, Attorney for Claimant.

George A. Helm, Esquire, Attorney for Employer/Servicing Agent.

ORDER GRANTING MOTION FOR SUMMARY FINAL ORDER

THIS CAUSE came before me upon the claimant's motion for summary final order pursuant to Fla. R. Admin. 60Q-6.120(1). On March 1, 2005, this Court conducted a Telephone Conference with the attorneys at which time the presentation of evidence was closed and arguments were supplemented. Following Closing Arguments, this Court requested a proposed Order from counsel for the Claimant. Thereafter, on March 15, 2005, this Court heard Employer/Carrier's Motion for Clarification. After considering all arguments and evidence, this Order is now entered.

The question presented is: Whether the claimant's having a permanent impairment for hypertension under the 1996 Florida Impairment Guide is a disability within the meaning of §112.18, Fla. Stat.

The parties jointly stipulate and agree that the Judge of Compensation Claims has jurisdiction of the parties and the subject matter and that venue is proper; that there was an employee-employment relationship on June 12, 2003, as well as April 2, 2004, and that Preferred Governmental Claim Solutions had coverage on both dates; that the claimant is a firefighter employed by the City of Port Orange; that the claimant passed a pre-employment physical examination without evidence of heart disease, hypertension or tuberculosis; that the claimant suffered from hypertension as of June 12, 2003; that the claimant reached maximum medical improvement on April 2, 2004, with a permanent physical impairment of between 1% and 10% of the body; that for the purposes of this determination, the exact percentage is not necessary and that if the claim is determined to be compensable, benefits will be handled administratively.

The parties submitted memorandums of law which have been considered together with the joint stipulations of the parties and the argument of counsel on the record on March 1, 2005, and March 15, 2005.

The claimant contended: that §440.15, Fla. Stat., is entitled Compensation for Disability and that the first sentence of the section provides that compensation for disability shall be paid for four classes of

disability, one of which is for permanent impairment and wage loss benefits; that this means that the Legislature has denominated permanent impairment benefits as compensation for disability. The claimant argues that these denominations by the Legislature are consistent with the definition of disability in §440.02(13), Fla. Stat. The claimant further contends that the definition of disability in §440.02(13), Fla. Stat., does not literally apply to §112.18(1), Fla. Stat., because the introductory language to §440.02, Fla. Stat., restricts the definitions to Chapter 440. The claimant further contends that permanent partial disability has been paid at all times since 1935 by impairment benefits of various kinds. Originally, these included the scheduled injuries. The claimant contends that in *Magic City Bottle & Supply Co. v. Robinson*, 116 So. 2d 240 (Fla. 1959), that the Supreme Court held that all compensation was for disability, including the injuries for which payment is made by calculating permanent impairment. The claimant contends that this same reasoning was followed in *Carr v. Central Florida Aluminum Products*, 402 S. 2d 565 (Fla. 1st DCA 1981), in which a claimant, who was permanently totally disabled due to amputation of both legs, claimed that he was also entitled to the impairment benefit for amputation, as it was something separate. The First District Court of Appeal rejected this argument. The claimant also points to *Caldwell v. Division of Retirement*, 372 So. 2d 438 (Fla. 1979), that §112.18(1), Fla. Stat., embodies

the strong public policy of the state and that this should not be limited by restrictive interpretation.

The claimant points out that the statute §112.18(1), Fla. Stat., provides that disability due to any one of the three named diseases is presumed to be by accident suffered in the line of duty.

The employer/servicing agent points to *Sledge v. City of Ft. Lauderdale*, 497 So. 2d 1231, (Fla. 1st DCA 1986), in which the Court indicated that a claim under §112.18(1), Fla. Stat., was to be considered an occupational disease for firefighters insofar as the statute of limitation was concerned. In *Sledge*, the First District Court of Appeal held that the statute of limitation had not run and the case was remanded to determine whether Sledge suffered a disability.

The employer/servicing agent cites §440.151(3), Fla. Stat., to the effect that "disablement" means the event of an employee's becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease; and "disability" means the state of being so incapacitated.

The employer/servicing agent also refers to §440.15(5), Fla. Stat., with regard to last injurious exposure.

The employer/servicing agent points to *Connor v. Riner Plastering Co.*, 131 So. 2d 465 (Fla. 1961), in which the court had to decide which of two

plastering companies was responsible for the claimant's condition. It was being determined that the second employer was responsible because the claimant had continued to work following his injurious exposures with the first employer and was not disabled until he lost time with the second.

The employer/servicing agent also points to *American Beryllium v. Stringer*, 392 So. 2d 1294 (Fla. 1980), to the effect that the disability commences the running of the statute of limitation and that an employee becomes disabled when he becomes incapacitated partially or totally because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease.

The employer/servicing agent contends that in occupational disease cases, the disability date is the accident date, relying on *Florida Power Corp. v. Brown*, 863 So. 2d 364 (Fla. 1st DCA 2003), to the effect that an occupational disease does not become compensable until the claimant has suffered a disability.

The employer/servicing agent contends that permanent impairment does not matter, relying on *Conners v. Riner Plastering Co.*, supra, that the controlling factor should be when the disability became permanent and not when the disease became permanent.

The employer/servicing agent also relies on *City of Miami v. Thomas*, 657 So. 2d 927 (Fla. 1st DCA 1995), to the effect that the disability under §112.18(1), Fla. Stat., can be either temporary or permanent.

The employer/servicing agent also points to *Manatee Memorial Hospital v. Special Disability Trust Fund*, 774 So. 2d 876 (Fla. 1st DCA 2000), in which the employer attempted to make a special disability trust fund claim to the effect that a permanent indemnity benefit, an impairment income benefit, is payable irrespective of disability and can be differentiated from permanent total disability, wage loss or death benefits.

The employer/servicing agent also points to the difference between the definitions of disability and a permanent impairment, in §440.02, Fla. Stat. By having defined them differently, the Legislature intended that permanent impairment be considered something completely different from disability.

The employer/servicing agent argues that the requirement in §112.18(1), Fla. Stat., that the three named diseases must result in death or disability in order to be compensable indicates that having the disease alone is not compensable, until the disease becomes disabling.

In the context of this statute, the question is: what is disability insofar as §440.15, Fla. Stat., is concerned? The *Thomas* case indicates that the disability may be temporary or permanent. The temporary disability would be one of lost time or reduced wages prior to maximum medical improvement; that is to say, temporary total disability under §440.15(2), Fla. Stat., or temporary partial disability under §440.15(4), Fla. Stat. A permanent disability is one which is after maximum medical improvement. It could be permanent total, that is to say, permanent as to duration and total as to

extent under §440.15(1), Fla. Stat. The question then is: what is a disability which is permanent as to duration but partial as to extent? Disabilities of that kind are compensated under §440.15(3), Fla. Stat., by the payment of impairment benefits only for those impairments of less than 20 percent of the body and for impairment benefits to be followed by a supplemental wage loss benefit for those impairments over 20 percent of the body.

The presumption statute clearly states that the disability due to these named diseases is presumed to be accident. Compensation for disability, which is permanent in duration but partial in extent, due to accident is compensated under §440.15(3), Fla. Stat., by the payment of impairment benefits, which the Legislature has conclusively presumed to be equal to the disability since all compensation is for disability. *Magic City Bottle & Supply Co. v.* Robinson, supra; also *Carr*.

I find that the claimant's interpretation of the law is the more reasonable and logical and in keeping with the purpose of §112.18(1), Fla. Stat.

However, the claimant's hypertension was not compensable until he reached maximum medical improvement and had a permanent impairment, which was April 2, 2004. While the parties used June 12, 2003, as the date of accident, the date of accident should be corrected to conform with the agreed upon evidence, that is, the date of maximum medical improvement and the beginning of permanent physical impairment, which is April 2, 2004.

The employer/servicing agent filed a motion for clarification, post-hearing, in regard to a notice of accident defense. The claimant did not object to it being considered.

The parties further stipulated and agreed that Dr. Reed was the carrier's IME and that his letter of April 16, 2004, to Mr. Lane, the carrier's previous counsel, and received within 5 days in the normal course of business, was the first notice to anyone that the claimant had reached maximum medical improvement and had a permanent physical impairment.

The employer/servicing agent contends that it did not have notice of the April 2, 2004, date of accident, and that no petition was filed for that date of accident. There was, however, proper notice of hearing.

The claimant contends that Dr. Reed's letter is timely notice. He cites *Mays v. Dixie Packers*, 677 So. 2d 991 (Fla. 1st DCA 1996), for the proposition that a Judge of Compensation Claims may change the date of accident to conform to the evidence and that there is sufficient notice here because the claim and defenses otherwise remain the same, i.e., is a permanent physical impairment a disability under §112.18? The same carrier was on the risk on April 2, 2004. Although average weekly wage would be determined from that date, the parties agreed that the benefits would be handled administratively. Therefore, changing the date of accident to conform to the evidence does not change the outcome.

I find that notice of injury was proper under the circumstances. The servicing agent knew of the date of maximum medical improvement and permanent impairment within 30 days. The employer/servicing agent's denial of compensability was on the ground that a permanent impairment is not a disability under §112.18. This is unaffected by notice of injury. There is no need that a petition be filed with the accident date April 2, 2004, when as here, the claim and defenses otherwise remain the same. *Mays v. Dixie Packers*, supra. See also Fla. R. Admin. 60Q-6.107(2).

It is hereby determined that the claimant, a Florida municipal firefighter, does suffer a disability due to hypertension; that he passed the requisite physical examination and there is no competent evidence to the contrary. Therefore, the claimant's motion for summary final order is hereby granted. The question presented is answered in the affirmative.

WHEREFORE, it is ordered and adjudged:

(1) The claimant's hypertension is a compensable injury as of April 2, 2004.

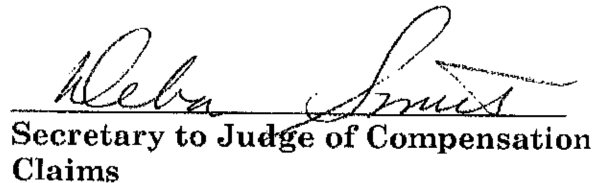
(2) The employer/servicing agent has indicated that it will provide benefits administratively if the claimant's hypertension is determined to be compensable.

DONE and ORDERED at Daytona Beach, Volusia County, Florida, this 29 day of March, 2005.

THOMAS PORTUALLO
Judge of Compensation Claims

Certificate of Mailing

This is to certify that a copy of the foregoing Order was sent by regular mail this 29 day of March, 2005, to: Gary Sedacca, claimant, 2463 Old Samsula Road, Port Orange, FL 32128; Richard A. Sicking, Esquire, attorney for claimant, 1313 Ponce de Leon Blvd., Suite 300, Coral Gables, FL 33134; George A. Helm, Esquire, attorney for employer/servicing agent, PGCS, P.O. Box 958456, Lake Mary, FL 32795; City of Port Orange, employer, 1000 City Center Blvd., Port Orange, FL 32129; and PGCS, servicing agent, P.O. Box 958456, Lake Mary, FL 32795.



Secretary to Judge of Compensation Claims