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

EMPLOYEE:
Roderick Bedford
Post Office Box 966
Lady Lake, FL 32158

ATTORNEY FOR EMPLOYEE:
Paul A. Kelley, Esquire
807 West Morse Blvd., Suite 201
Winter Park, FL 32789

EMPLOYER:
State of Florida
Department of Corrections
19225 Highway 27 North
Clermont, FL 34715

ATTORNEY FOR EMPLOYER/SERVICING AGENT:
Gerald Znosko, Esquire
Post Office Box 941389
Maitland, FL 32794-1389

SERVICING AGENT:
Division of Risk Management-
State of Florida
Post Office Box 8020
Tallahassee, FL 32314-8020

OJCC CASE NUMBER: 06-021125ORL

DATE OF ACCIDENT: 06/18/2003

FINAL COMPENSATION ORDER

After proper notice to all parties, a hearing was held and concluded on this claim in Orlando, Orange County, Florida on the morning of Tuesday, June 17, 2008. Present at the hearing was the claimant, Roderick Bedford, and his attorneys, Paul A. Kelley and Michael Clelland. Attorneys Gerald Znosko and Humberto Valdez represented the employer/servicing agent, hereinafter referred to as the E/SA. In court testimony was received from the claimant and employer representative, Marilyn Bradly. Also in attendance at the final hearing were the claimant's sons Cameron Bedford and Roderick Bedford, Jr.

This order addresses the Petition for Benefits that were filed with DOAH on 7/19/06, 2/23/07 and 12/21/07.

The claimant, a forty-six-year-old former correctional officer, seeks the payment of temporary indemnity benefits and the authorization medical care for a heart condition he maintains was sustained within the course and scope of his employment. He pursues the compensability of his claim under the Florida Heart and Lung Bill.

The issues to be determined were as follows:

1. Whether the claimant is entitled to a finding of compensability for his hypertension and hypertensive stroke condition?
2. Whether the claimant is entitled to the payment of temporary total disability benefits from 6/18/03 and continuing as otherwise provided by law?
3. Whether the claimant is entitled to the authorization a cardiac physician for treatment of his hypertension, hypertensive stroke and conditions resulting there from, as the nature of the injury and process of recovery requires?
4. Whether the claimant is entitled to the payment of penalties, interest, costs and attorney fees at the expense of the E/SA?

The E/SA defended the claim on the following grounds:

1. That the statute of limitations has run on the claim in that more than two years have elapsed since the alleged incident and the filing of the petition for benefits.
2. That the claimant failed to give appropriate notice of the alleged injury pursuant to Section 440.185, Florida Statutes and any other applicable statutory sections.
3. That the claimant's condition is personal in nature and is not work related.
4. That the condition claimant complains of is idiopathic.
5. That the claimant's condition is pre-existing in nature.
6. That the claimant's employment is not the major contributing cause of his condition.

7. That no penalties, interest, costs or attorney fees are due.

STIPULATIONS OF THE PARTIES

1. That the Judge of Compensation Claims has jurisdiction over the parties and the subject matter.
2. That venue properly lies in Orange County.
3. That there was an employer/employee relationship at the time of the alleged 6/18/03 accident.
4. That worker's compensation insurance coverage was in effect on the date of the alleged accident.
5. That there was timely notice of the pretrial conference and the final hearing.
6. That the claimant's base average weekly wage was $649.73 with fringe benefits valued at $117.43.
7. That the claimant's fringe benefits are to be included in his AWW calculation effective 6/14/04, the date they were discontinued.
8. That the claimant's claim to an entitlement to permanent total disability benefits is not ripe at this time. That upon the parties' agreement the issue will be reserved for litigation at a latter time if required.

JUDGE'S EXHIBITS

1. The pre-trial stipulation and pre-trial compliance questionnaire with attachments approved by Judge John Patrick Thurman in his order of 4/02/07 and any amendments thereto.
2. A composite exhibit consisting of the claimant's trial memorandum dated 6/10/08 and the Employer/Carrier's Hearing Information Sheet dated 6/13/08 along with any attached

case opinions. The composite items were considered for argument purposes only.

JOINT EXHIBIT

The 2/22/07 deposition transcript of Dr. Stephen C. Kirkpatrick and attachments.

CLAIMANT'S EXHIBITS

1. The 7/18/07 deposition transcript of Dr. Patrick F. Mathias and attachments.
2. The Employee/Claimant's motion for sanctions dated 10/23/07 and attachments.

E/C EXHIBITS

1. The 2/08/08 deposition transcript of Captain Curtis Stafford.
2. The 2/15/08 deposition transcript of Adro Johnson.
3. The 2/22/08 deposition transcript of Darlene Cirinna and attachments.
4. The 5/21/08 deposition transcript of Deonne Hill and attachments.
5. The 3/24/08 deposition transcript of Dr. Hall Baker Whitworth, Jr. and attachments.
6. The 1/15/08 deposition transcript of Debra Roberts and attachments.
7. The 3/25/08 deposition transcript of Alison Jordan and attachments.
8. The 2/08/08 deposition transcript of Sergeant Craig Hill.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the evidence presented. I have observed and assessed the candor and demeanor of the witnesses that testified live before me, and I have resolved all of the

conflicts in the live testimony, deposition testimony and documentary evidence.

Although I have not commented on and summated each and every piece of evidence that was admitted, I have nevertheless carefully considered it. In evaluating that evidence I have not interpreted the facts in this case liberally in favor of either the rights of the injured worker or the rights of the employer. I have also construed the law in accordance with the basic principles of statutory construction. Based on the foregoing, the evidence, and applicable law, I make the following determinations:

1. I find that I have jurisdiction over the parties and the subject matter.
2. I accept as true those matters for which the parties have stipulated.
3. Employed as a correctional officer at the time of his injury, I find that Mr. Bedford was a member of a protective class of employees under the Florida Heart and Lung Bill.
4. I find that prior to his employment, he underwent a pre-employment physical that revealed no evidence of hypertension or heart disease.
5. On June 18, 2003 Mr. Bedford sustained a hypertensive stroke that disabled him from performing his duties as a correctional officer.
6. There is unrefuted evidence that Mr. Bedford's stroke resulted from elevated blood pressure and that his hypertensive condition developed while he was employed as a correctional officer for the Lake County Correctional Institute. In light of the above findings, I conclude that Mr. Bedford has established a prima facie showing of a compensable injury under section 112.18.
7. In reaching the above conclusions I accept the medical testimony of Dr. Patrick Mathias rejecting the E/SA's *Frye* argument that the doctor's opinions were based on novel scientific evidence. Dr. Mathias' testimony establishes:
    a. That there was no pre-existing (prior to employment) underlying heart disease.
    b. That the stroke was caused by elevated blood pressure and not by a clogged carotid artery, findings consistent with no showing of a clogged artery and a blood pressure reading at the time of hospital admission consistent with a hypertensive stroke.

c. That the results of the stroke caused Mr. Bedford permanent immobility and muscle weakness on the left side of his body precluding him from working as a correctional officer and producing a class four impairment.

8. The E/SA's independent medical examiner, Dr. Hall Whitworth's testimony confirms that uncontrolled hypertension caused the stroke and that the stroke would prevent Mr. Bedford from performing manual physical activities that would require ongoing exertion. He too opined Mr. Bedford sustained a class four impairment.

9. I do not find that the E/SA has produced evidence to otherwise overcome the presumption of a compensable hypertensive and cardiac related injury. Although Dr. Whitworth acknowledges that job related stress could be a factor contributing to a patient's hypertensive condition, he expressed the belief that claimant's obesity and family history was the more likely cause for the condition. However he was not aware of any specific scientific study that measures objectively the influence of the individual risk factors to support his conclusions. Although he is of the opinion that employment is not as strong a factor, the legislature has deemed it a sufficient enough factor to warrant a presumption under section 112.18 for this classification of employee.

10. Under the facts of this case Mr. Bedford was apparently obese prior to his employment and yet he still did not show evidence of hypertension at the time of his pre-employment physical. I am not convinced that there is some other non-work related cause for his hypertension and hypertensive stroke. I the opinions of Dr. Mathias over those of Dr. Whitworth as to there being any clearly definable cause for Mr. Bedford's hypertension and the injuries flowing there from. I find the presumption under 112.18 has not been rebutted.

11. In regard to the E/SA's notice defense I find that Mr. Bedford, because his condition occurred while at home, did not become aware that there might be job a connectiveness and a possible workers compensation claim associated with his hypertensive stroke *until his discussion with a police officer friend two weeks before his meeting with his attorney on June 29, 2006.*

    a. I accept as true Mr. Bedford's testimony that he was not familiar with the Florida

Heart and Lung Bill prior to that time. I find that his testimony in that regard is consistent with the rest of the record evidence that suggests there was no formal training of the correctional officers at his facility before June 18, 2003 about the Florida Heart and Lung Bill and how to pursue claims there under. It was evident from their deposition testimony that the employees at the facility had no idea that they might have a compensable heart or lung injury claim even if their injury or disability occurred when they were not on the job (see for example the deposition testimony of Captain Stafford, former warden, Adro Johnson and Sergeant Craig Hill).

b. I note that Mr. Bedford routinely reported incidents that did occur on his job and that his failure to promptly report this incident as a workers compensation injury evidences the fact that he shared, like the other employees, a lack of understanding that a condition involving his heart or lungs that occurred off the job still might be considered job related for workers compensation purposes.

c. I find that when Mr. Bedford applied for disability retirement, he applied for regular disability retirement and not for in-line-of-duty disability retirement not knowing the difference between the two. This finding is consistent with the testimony of former personnel service specialist for the Department of Corrections Orlando Service Center, Alison Jordan. Ms. Jordan was in addition to supervising seven employees in the area of payroll and benefits responsible for filling out paperwork for officers regarding their request for disability retirement. Although she did not recall seeing the application for disability retirement filled out by Mr. Bedford, she acknowledged that in order to fill out the form F-13a she would have had to have seen his application for disability. She checked off regular disability retirement based on the application from Mr. Bedford (E/SA Exhibit #7 at pg14). It is unclear as to how Mr. Bedford's applications eventually became marked as in-line-of-duty, whether marked by claimant's wife at the direction of a representative of the Division of Retirement or marked by a Division of Retirement representative

upon initial review of the application and familiarity with the nature of the claimant's injury and the Heart and Lung Bill. Because of this confusion I accept as true claimant's testimony that he did not know to mark his application as a request for in-line-of-duty disability.

d. It is also significant to note that Ms. Jordan never counseled or discussed with the different correctional officers the difference between in-line-of-duty versus regular disability benefits (Id at pg 24). Ms. Jordan was not familiar with the Heart and Lung Bill when she was working at the Service Center and she testified that had she known Mr. Bedford's application was occasioned by a hypertensive stroke she would not have known to let Mr. Bedford know that he could file for an in-line-of-duty disability pension (Id at pgs 29-30). Neither would she have known to refer the matter over as a possible workers compensation claim (Id at pg 36).

e. I also find that even after Mr. Bedford discovered that he had been accepted for in-line-of duty disability in September of 2004 he did not know that it meant he might possibly have a job related or workers compensation injury. I accept his testimony on this point as believable and trustworthy just as I accept the employer witnesses testimony that they failed to associate Mr. Bedford's injury as a possible workers compensation claim even after receiving notification that he had been accepted for an in-line-of-duty disability pension and just as I accept that the employer failed to recognize a possible Heart and Lung Bill claim after they became aware that Mr. Bedford had sustained a hypertensive stroke.

f. In concluding that the E/SA did received notice that Mr. Bedford was accepted to receive line-of-duty disability benefits I accept the testimony of the benefits administrator of the Department of Management Services Division of Retirement, Debra Roberts. She testified that her department's procedure was to notify the agency that their employee was approved for disability benefits and to report the classification of such benefits (E/SA Exhibit #6 at pg 23). The division maintained a disability case file and any return mail is logged into it. They had no showing that

the mail was returned (Id at pg 26). Moreover the notice of acceptance that would have been mailed out on September 27, 2004 requested a completed form WC-1 inquiring whether Mr. Bedford received any workers compensation payments. The Form WC-1 was received from the employer on October 7, 2007 evidencing their receipt of the notice of acceptance (Id at pg 47).

g. Alison Jordan acknowledged that the notification of acceptance would have been sent to her payroll supervisor at the time, Joyce Geiger pgs 26-27). As such she could not state with certainty that the employer did not receive the notice of acceptance (E/SA Exhibit #7 at pg 27). Department of Corrections personnel services specialist, Darlene Cirinna, in her February 22, 2008 deposition confirmed that the agency did in fact receive the notice of acceptance by mail on October 4, 2004 as well as her receiving a telephone call on October 7, 2004 requesting a WC-1 form (E/SA Exhibit #3 at pgs 7-9 & 13).

h. I find from the record before me that there is no evidence establishing that in fact a physician informed Mr. Bedford that either his hypertension or his hypertensive stroke was caused by his employment thereby leading him to reasonably know to pursue a workers compensation claim against his employer.

i. I find from the record before me no evidence that the employer told Mr. Bedford of the Florida Heart and Lung Bill and his rights there under to the extent that he would have been on notice of a possible claim.

j. I find that if the employer did not know under the circumstances that Mr. Bedford might have a claim under the Heart and Lung Bill, by not having informed Mr. Bedford of the bill and its provisions, the employer would be hard pressed to argue that Mr. Bedford should have known of his ability to pursue such rights.

k. I find that Mr. Bedford did not become aware of the possibility of a job-related workers compensation claim until his police officer friend referred him to his attorney in mid-June of 2006. Because an injury under the Heart and Lung bill involves occupational diseases, section 440.151(6) provides that the time for notice

of injury provided in s. 440.185(1) shall be extended in cases of occupational diseases to a period of 90 days.

l. Section 440.185(1)(b) provides that if the cause of the injury could not be identified without a medical opinion, the employer is to inform the employer within 30 (sic) days after obtaining a medical opinion indicating that the injury arose out of and in the course of employment. Here I find that claimant did not receive such medical testimony indicating that his stroke was caused by his employment. Nevertheless, upon consultation with counsel he learned that his condition might be presumptively compensable and he accordingly noticed the employer of his claimed compensable injury by filing a Petition for Benefits on July 19, 2006. That petition was clearly filed within 90 days of Mr. Bedford's discovery of a relationship between his hypertensive stroke and his employment, and hence said notice I find was timely.

m. In the alternative, I find that the employer had actual knowledge of the injury within days of its occurrence and it's disabling impact on Mr. Bedford. They were aware that the nature of his injury was one involving a hypertensive or heart condition. Moreover the employer should have been knowledgeable of the Florida Heart and Lung Bill and its application to correctional officers. Likewise they should have informed its officers of the bill and its implications in workers compensation cases. The employer failed to provide such notice to its employees in general and to Mr. Bedford in particular. As such I find they should be estopped from asserting the notice defense

12. In regard to the E/SA's statute of limitations defense section 440.19(1) provides that the employee must first provide the employer with notice of the injury consistent with s 440.185(1). I find that Mr. Bedford did so for the reasons addressed in paragraphs 11(l)-(m) above. Secondly, the employee is required to file a petition for benefits within 2 yeas after the date on which the employee knew or should have known that the injury or death arose out of work performed in the course and scope of employment. As previously reference

above, I find that Mr. Bedford could not have known and did not know that he had a possible job related and compensable claim until June of 2006. Because he filed a petition for benefits within one month of such knowledge I find that his filing of the petition was within the statute of limitations period and therefore I reject the E/SA's statute of limitations defense.

13. In regard to the claim for medical care, I find that the record supports the conclusion that Mr. Bedford sustained a permanent compensable injury that requires the authorization of a cardiac physician to furnish such reasonable and medically necessary treatment for Mr. Bedford's hypertension and hypertensive stroke as the nature of the causally related injuries and process of recovery requires.

14. In regard to the claim for the payment of temporary indemnity benefits, I find that the record supports the conclusion that Mr. Bedford had been totally disabled at least through June 5, 2004 because of his stroke. There is no evidence introduced into the record that he had been released to any kind of light duty or modified work. Although both independent medical examiners have opined that Mr. Bedford has likely reached maximum medical improvement with regard to his stroke, because both parties stipulate that a determination of permanent total disability status is not ripe at this time, and because there may potentially be other conditions for which Mr. Bedford may not have reached overall MMI, I do not address the issue of maximum medical improvement at this time. I therefore award temporary total disability benefits from the date of injury and continuing as otherwise provided by law. As Mr. Bedford received certain administrative benefits during his disability period claimed, the employer should be entitled to administrative credit for the payment of such benefits. Such credit should be handled administratively.

WHEREFORE it is hereby **ORDERED** and **ADJUDGED** that:

1. The request for the finding of compensability of claimant's hypertension and hypertensive stroke condition is granted.
2. The request for the authorization of a cardiac physician for the treatment of the

claimant's hypertension, hypertensive stroke and conditions resulting there from as the nature of the injury and process of recovery requires is granted

3. The request for the payment of temporary total disability benefits from 6/18/03 and continuing as otherwise provided by law with interest and penalties is granted.
4. The request for the payment of the claimant's reasonable attorney fees and costs at the expense of the E/SA is granted. Jurisdiction is reserved to determine the amount of said fees and costs.
5. All benefits ripe at the time of trial not otherwise reserved by stipulation of the parties or prior ruling of the undersigned are hereby waived.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida.

W. James Condry, II
Judge of Compensation Claims
400 West Robinson Street, Suite 608-North
Orlando, Florida 32801-1701

I HEREBY CERTIFY that the foregoing Compensation Order was entered and a true and accurate copy has been furnished by U.S. mail delivery this 16th day of July 2008, to the parties listed above:

Susan Berman
Assistant to Judge of Compensation Claims