STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS

Jean Lima, Claimant, and Personal Representative/Spouse of Carlos Lima, Deceased Employee, vs. Pinellas County Sheriff's Office, and Pinellas County Risk Management, Employer/Self Insured.	)	OJCC Case No.: 07-013955DBB Date of Accident: 11/21/2004

FINAL COMPENSATION ORDER

This cause came before the undersigned Judge of Compensation Claims at Sarasota, Manatee County, Florida on June 16, 2008 for a final hearing on the claimant's claims for death benefits payable under section 440.16, Florida Statutes; payment of funeral expenses in the amount of $7,361.00; compensability of the hypertension heart disease and heart attack claim that resulted in death; interest and penalties on unpaid benefits; and costs and attorney's fees from E/C under section 440.34(3)(a)-(d), and 440.32 Florida Statutes. The petition for benefits was filed on May 21, 2007 and mediation occurred on September 13, 2007. The parties' Uniform Statewide Pretrial Stipulation was filed on October 3, 2007. The claimant was represented by Paul A. Kelley, Esquire, and the employer/self insured (E/C) by Robert C. Swain, Esquire.

The E/C defended on the basis that: claimed conditions are non occupational and employment is not the major contributing cause of conditions or death; penalties, interest, costs, and attorney fees are not owed; and spouse is not dependent upon decedent under 440.16.

The parties entered into the following stipulations:

a. The date of accident is November 21, 2004 and Manatee County, Florida is the proper venue.

b. There was an employer/employee relationship on the date of accident, and employer had workers' compensation insurance coverage in effect.

c. E/C does not accept employee's accident and injury as compensable.

d. Claimant timely reported the accident and the parties received timely notice of the final hearing.

e. I have jurisdiction over the parties and subject matter of this claim.

f. Employee's average weekly wage and compensation rate are $1,050.85/$626.

g. If medical benefits are determined to be due the parties agree that the exact amounts payable to health care providers will be handled administratively and medical bills need not be placed in evidence at trial.

h. Notices of controvert/denial/response to petition were filed on July 20, 2006 and June 8, 2007.

i. Employee came out of the water and fell on the beach, not in the water on the date of accident; otherwise the parties agree to the remaining facts in the medical examiner report of the accident.

j. Employee's minor son Kieran, and daughter Seana, who is under age 22 and attending college, are dependents per section 440.16.

k. The parties accept the medical examiner's opinion that the employee's cause of death was hypertensive and arteriosclerotic heart disease.

l. Dr. Flores' records show employee had a history of hyperlipidemia since 1993, as well as gastritis/ulcers and Dr. Mathias did not have these records. Dr. Oliver's records show that employee had knee problems for eight years with pain and infection and psychosocial stress. Employee was off work per the Family Medical Leave Act related to his knee for under or at 7 weeks.

m. Employee was employed by Pinellas County Sheriff's Office on January 28, 2002 and he had no prior law enforcement employment. He worked until the date of death of November 21, 2004.

The following documentary items were received in evidence:

Exhibit 1: Uniform Statewide Pretrial Stipulation as amended at the beginning of the final hearing.

Exhibit 2: Deposition of Jean Lima taken on May 8, 2006.

Exhibit 3: E/C record of indemnity benefits paid to claimant prior to denial of the claim.

Exhibit 4: Deposition of Laura Hair, M.D. taken on May 22, 2008, for facts only as she was not authorized, an IME, or EMA, except for her opinion on cause of death which was agreed to by the parties as noted above.

Exhibit 5: Deposition of Patrick Mathias, M.D. taken on May 23, 2008.

Exhibit 6: Deposition of Stephen P. Glasser, M.D. taken on May 14, 2008.

Objections made during deposition testimony were ruled on by the undersigned as contained in the margins of those depositions.

Claimant Jean Lima appeared and testified at the hearing. Counsel for the parties presented oral argument and submitted written Memoranda of Law with copies of case law. I took judicial notice of the appropriate pleadings in the court/computer file.

In making my findings of fact and conclusions of law in this matter, I have carefully considered and weighed all the evidence that was presented to me by deposition testimony, medical reports, and by live testimony presented at the hearing. I have observed the candor and demeanor of the witness who appeared live before me and I have resolved all conflicts in the testimony and evidence. I have attempted to distill the testimony and facts together with the findings and conclusions necessary to the resolution of this claim. I have not attempted to painstakingly summarize the substance of the claimant's testimony or the testimony of any deposition witness in this matter, nor have I attempted to state non-essential facts. Because I have not done so does not mean that I have failed to consider all the evidence. Based on the evidence and the applicable law, I make the following determinations of fact and conclusions of law:

1. I have jurisdiction over the subject matter and parties, and venue is proper in Manatee County, Florida.

2. The stipulations of the parties are approved and accepted as findings of fact.

3. Employee Carlos Lima was employed by the Pinellas County Sheriff's Office beginning on January 28, 2002 as a corrections/detention deputy. The parties agree that employee underwent a preemployment physical examination prior to employment with Pinellas County that did not show evidence of hypertension or heart disease.

4. On November 21, 2004, employee Carlos Lima, who was 55 years old at the time, went scuba diving off Bradenton Beach in Manatee County with his son and others. He indicated he was having difficulty breathing, and was informed to adjust his regulator and proceeded to swim to shore. When he reached the beach, employee collapsed and bystanders attempted CPR. Emergency medical services were called and transported him to the hospital where he was pronounced dead. The dive equipment was checked for abnormalities and checked out as having no damage or deterioration.

5. Dr. Laura Hair is the associate medical examiner for District 13, Hillsborough County. She was associate medical examiner for District 12, which includes Manatee County, at the time of employee's death, and she investigated his death and conducted his autopsy. Dr. Hair testified that the significant findings on autopsy were that when she sectioned his arteries and the heart, he had left ventricular hypertrophy, which meant that the left ventricle was very thick, and he also had extensive atherosclerosis of the four major coronary arteries that were dissected.

Dr. Hair explained that atherosclerosis is hardening of the arteries, which is fatty buildup on the artery walls that can build up so much that it completely occludes or closes off the artery. When that happens people have what they call heart attacks, which she indicated is when the muscle no longer gets blood and it causes the heart to go into an arrhythmia, the person falls down, and complains of pain. Dr. Hair said that employee's arteries were not completely occluded but were very occluded, up to 85 percent, and she did not find evidence of a previous myocardial infarction or heart attack, or scarring in the walls. She noted that probably 50 to 60

percent of the people who have heart attacks don't know they have heart disease until they have heart attacks.

Dr. Hair indicated that employee's left main anterior descending and left circumflex arteries were narrowed by up to 50 percent by atherosclerotic plaque. Employee also had hypertrophy of the left ventricle, which Dr. Hair said shows that the left side of the heart, which pumps the blood through the aorta and the rest of the body, was working very hard because it's not getting enough oxygen. She did not find polymorphic nuclear cells, or inflammatory cells, which she said would be there if employee had an acute infarction or heart attack, which suggested to her that this was a very sudden event.

Dr. Hair also found that employee had arteriolonephrosclerosis, which she said is kind of like a high blood pressure, the kidneys bear the brunt of it, and his kidneys looked a little pock marked on the outside. According to Dr. Hair, this is caused by the blood pressure being raised, which is caused by the atherosclerosis. Toxicology revealed only what Dr. Hair believed employee was given in the hospital, and he did not have carboxyhemoglobin, which meant that he was not breathing in carbon monoxide.

It was Dr. Hair's opinion that employee died of arteriosclerotic and hypertensive heart disease and the manner of death was natural. She said that atherosclerosis and hypertension can lead to fatal arrhythmias or a sudden abnormality when the heart starts beating a little differently and then that causes the heart to fibrillate and stop beating. She noted that when emergency services found employee he was in asystole, or without a heart rate and his heart had stopped beating. Dr. Hair testified that there is no recognized method in forensic pathology to determine the length of time that an occlusion or atherosclerotic disease is present, other than the fact that it doesn't happen overnight. She also noted that there was fatty fibrous tissue within the lumen of the employee's coronary artery that could possibly have been a resolving thrombus.

6. Dr. Patrick Mathias is employee's IME physician. He is board-certified in internal medicine, cardiology, critical care, interventional cardiology, and electrophysiology, and he also holds a certification with the American Society of Hypertension Specialists. He

reviewed employee's preemployment physical, preemployment psychological screening, autopsy report, letter from Dr. Stephen Glasser, and a physical examination of December 13, 2001. He also looked at reports of medications taken by employee and lab reports with regard to hyperlipidemia. It was Dr. Mathias' opinion that employee suffered sudden cardiac death. He testified that the commonest cause of sudden cardiac death and the cause of employee's is coronary artery disease. He noted that employee had multiple arteries in his heart that were clogged, full of plaque, and incapable of transmitting blood to his heart muscle. According to Dr. Mathias, as a result of that deprivation of blood supply and scarring on the heart, the heart developed an abnormality of rhythm where it basically raced out of control, ceased to pump, and then quit beating, and the technical term for this is ventricular tachycardia, ventricular fibrillation, and cardiac arrest.

Dr. Mathias testified that employee's heart was significantly heavier than it should be, was definitely hypertrophy, and hypertrophy inevitably involves some degree of scarring. He explained that the heart muscle gets thickened at the expense of the health of the heart muscle fibers, which get disbursed with scar tissue, and that results in a propensity for arrhythmia. Dr. Mathias suspected that the two causes that may have been operative to cause employee's left ventricular hypertrophy were coronary artery disease and hypertension. He said it was impossible to assign it to one or the other and it could be a combination of both.

Dr. Mathias said that if employee had hypertension it would be essential hypertension, which is high blood pressure for which cause is not evident, because none of his medical records or autopsy showed evidence of second degree hypertension. According to Dr. Mathias, it is not known what the cause of any individual's coronary artery disease is, but there is a list of risk factors from epidemiological studies, which include high blood pressure, diabetes, a positive family history, high cholesterol, smoking, abdominal obesity, psychosocial stress, and lack of intake of fruit and vegetables He agreed that there are people with no risk factors who have coronary artery disease, as well as people with all of the risk factors who do not develop the disease. Dr. Mathias testified there is no way to scientifically state what the major cause of a

person's coronary artery disease is because they are dealing with risk factors, and do not have a clear cut cause and effect relationship. He said that scientifically there is a difference between risk factor and cause. He defined risk factor as a statistical correlation that implies increased risk, with links that are hypothesized but not proven. He defined cause as something that definitely, predictably, inevitably produces a disease.

According to Dr. Mathias, employee's lab reports from December 2001 regarding his hyperlipidemia were not bad and not indicative of a risk for heart disease. He did not think it was possible to say that employee had long standing atherosclerotic disease based on the medical and lab reports he reviewed. He said that everyone has atherosclerotic disease but for that to develop into overt heart disease is a different matter, and it develops by episodic flare-ups where one has what is called a thin cap fibroatheroma, which causes a worse blockage in that area, and this can happen in a matter of days or weeks and does not require years to develop. He testified that he has patients who have had a negative heart catheterization and come back to the hospital in three or four weeks with a heart attack due to a plaque rupture.

Dr. Mathias reviewed employee's preemployment physical and said there was no evidence of heart disease. His blood pressure was 148/86, and was not considered hypertension. He said there was no indication in the medical records he reviewed that employee had coronary artery disease or hypertension prior to beginning his employment with the Sheriff's department on January 28, 2002. He could not answer one way or the other whether employee's elevated lipids caused his coronary artery disease and noted they were small deviations from the guidelines. Among the risk factors, Dr. Mathias said that employee had no diabetes, no documented high blood pressure, no history of smoking (except in the remote past), his cholesterol deviation from the ideal was minimal, the autopsy did not mention abdominal obesity, and he did not know whether employee had a family history of hypertension or heart disease or if employee lacked fruits and vegetables in his diet. He did not know whether employee had psychosocial stress.

Dr. Mathias testified that he was fairly familiar with correctional officers' duties, as he worked at a prison ward at Cook County Hospital 30 years ago. He recalled that the officers had to interact with inmates, had a lot of paperwork, had to tolerate abuse from inmates, and had to break up fights. He said it was like being in the military with a strong hierarchy and very little autonomy. He also said he has treated many correctional officers and talked with them about their jobs and responsibilities. He noted that one of the biggest frustrations is that the officers get written up by the inmates and then have to get investigated. Based on a hypothetical by claimant's counsel, Dr. Mathias agreed that a detention deputy's duties could definitely be one of the psychosocial stresses that would contribute to coronary artery disease.

Dr. Mathias thought it was unlikely that employee's scuba diving had anything to do with his sudden death because the scuba equipment was found to be functioning correctly.

On cross-examination Dr. Mathias testified that he does IMEs for both claimant and defense, with 90 percent for claimant, and has done one a week since January 2008. Since that time he has done about 2 IMEs a month for claimant's firm. He agreed that this accounts for between 40 and 50 percent of his IMEs, and has for at least 7 years. He did not know whether employee was on any family medical leave during his three years of employment with the Sheriff's office, how long employee worked as a detention deputy, how long he was on light duty, or how long he may have been in alternative duty in the courts. Dr. Mathias agreed that total cholesterol of 222 is considered high as are triglycerides of 445. He did not have any of employee's records from Dr. Flores, and agreed that in assessing whether employee had hyperlipidemia it would have been usual for him to have employee's family physician's records. He did not know whether employee was ever diagnosed with a heart murmur, but agreed that there were findings in the autopsy of mild degeneration of the posterior mitral leaflet that would support that diagnosis. He said it would take years for the hypertrophic changes in the heart to take place.

Dr. Mathias conceded that it would be fair to say that employee's atherosclerotic heart disease existed at the time of his preemployment physical, and that it would not be unusual to

have no signs of it going through a physical examination. He testified that out of the 400,000 sudden cardiac deaths in the United States each year, approximately 100,000 to 150,000 occur in individuals without a prior history. He indicated that a heart murmur is not a risk factor for development of coronary artery disease. Dr. Mathias testified that there are two components to the risk factor of psychosocial stress-exposure and reaction. The amount of time exposed is relevant to the risk. He felt it was unlikely that an acutely infected knee that had surgery in the process of reconstruction is going to be implicated in the genesis of coronary artery disease. He agreed a chronic pain condition could cause psychosocial stress.

7. E/C's IME was Dr. Stephen P. Glasser, who is a professor of medicine, cardiologist, and in the division of preventative medicine at the University of Alabama at Birmingham. He is board-certified in cardiology and clinical pharmacology. He reviewed the records of the Diagnostic Clinic, Jesse Flores', Brian Oliver, Mease Countryside Hospital, Lakeside Occupational, Medco Health Solutions, the medical examiner autopsy, and Patrick Mathias. It was his understanding that employee suffered a sudden cardiac death while scuba diving.

In his review of the autopsy, Dr. Glasser found as significant abnormalities the thickening of the heart muscle and blockages of the coronary arteries. He said these went along with the presumptive and most likely cause of sudden cardiac death of coronary artery disease. He said it is known from extensive research that those changes take many years to develop, and that the atherosclerosis, and blockage of the coronary arteries particularly, begin in young life and progress as we age. Dr. Glasser said that in the records he reviewed there was no frank evidence of coronary artery disease but this was not surprising. He testified that the significant thing in the medical records was that there were multiple examinations and histories in which the absence of cardiac symptoms was elicited. He noted a heart murmur was heard on occasion but said this did not relate to the death or anything to do with the case. Dr. Glasser said employee had abnormal lipids in his blood that went back quite a ways, which is a risk for heart disease.

Dr. Glasser testified that exercise can be a trigger of an event in someone who has coronary artery disease. He noted that employee was 55 years old, and that is the mean age of death of people with coronary artery disease, and that heart disease is the number one cause of death of males in their 50's. Dr. Glasser said that it is about as close to 100 percent that employee's disease preexisted his employment with the Sheriff's office as anything he can say. He said employee's heart disease followed a normal progression. He testified that based on the literature and his experience, it takes 30 to 40 years of progression for heart disease to progress to the point that it presents with some type of clinical event such as sudden cardiac death or a heart attack. It was his opinion that employee's employment was not the cause of his disease or death.

Dr. Glasser testified on cross examination that he was not arguing the issue of whether employee's employment with the Sheriff's office was stressful or not, but that if we accept stress as a risk factor for the development of coronary disease, it's the exposure to stress over decades that relates to the development and not to stress over two and one-half years. According to Dr. Glasser, lipids are a much stronger risk factor for the development of coronary disease and it takes decades to develop. He agreed that it was not just exposure to stress that is a risk factor, but how a given individual responds to that exposure.

Dr. Glasser reviewed employee's preemployment tests and physical and did not see any evidence of hypertension or heart disease, but did see abnormal lipids. Dr. Glasser explained that a risk factor is a statistical association with a disease outcome, and doesn't necessarily imply cause of disease. He said that atherosclerosis is an age related progression and a risk factor is something that accelerates that progression and doesn't necessarily imply cause, at least not sole cause even if it's a cause at all. He agreed that just because someone has a risk factor doesn't mean necessarily that they will develop that disease. He also agreed that with coronary artery disease a person can have all the risk factors and never develop the disease or have none of the risk factors and still develop the disease. He further agreed that the process of developing coronary artery disease is not fully understood to the point where we can state that one or a

combination of risk factors was the direct cause of an individual's coronary artery disease. Dr. Glasser agreed that he is not able to state what the direct cause of employee's coronary artery disease is. He could not absolutely completely rule out employee's job, assuming a level of stress as a detention deputy, as a contributing or aggravating factor in the development or progression of his coronary artery disease.

Dr. Glasser said he could not tell from the records he reviewed, but if employee had hypertension the likelihood is that it would be essential hypertension because there was no evidence of the blood pressure elevations, and most causes of secondary hypertension will progress and there will be obvious manifestations. He said it would also be more likely on a statistical basis. He said the cause would be unknown, and it would be another risk factor affecting the development of employee's atherosclerosis over decades. Dr. Glasser had employee's medical records from 1993 to 2004 and agreed that there was no evidence of coronary artery disease.

Dr. Glasser agreed that employee's knee problems and a bleeding ulcer could be causes of psychosocial stress.

8. Employee's wife, and claimant herein, Jean Lima, testified by deposition and live at final hearing. They were married on May 18, 1984 and have two children, Seana born October 29, 1987, and Kieran born November 30, 1990. At the time of employee's death, claimant was employed with Nielsen Media Research as a lead analyst, and had been there since 1988. She testified at deposition that in November of 2004 she earned $46,000 yearly. She was the beneficiary of two life insurance policies upon employee's death, one for $117,000 through his employment, and one for $100,000 through her employment, and she received those proceeds in February or March 2005 after employee's autopsy was finalized.

Claimant testified that prior to employee's employment with the Pinellas County Sheriff's Office he worked part time for UPS and part time for Nielsen Media Research. She was not sure of his income from those jobs. She thought that he earned about $46,000 yearly with the Sheriff's office and worked the midnight shift. The family home was jointly titled

between them, and monthly payments were $344. According to claimant, there was no family income other than hers and employee's at the time of his death, and they did not contribute to the support of anyone other than their two children. Claimant said she was living with employee at the time of his death and had never been separated from him. Claimant testified that she and employee had a joint checking account, and he also had a separate checking account that he used to pay monthly payments and insurance on his motorcycle. At the time of his death, employee had a car and motorcycle, and neither was paid for. Claimant also had a van which was not paid for, but she paid it off two months after employee's death. Their daughter had a car, and claimant paid the gas and the daughter paid her insurance from a job she recently obtained. Claimant said that employee did not have a prepaid funeral plan and the expenses were about $8,000. The family tried to travel on a vacation every couple years. At the time of employee's death, there were no extraordinary debts other than what was owed on the vehicles and house.

Claimant testified that she mowed the lawn and employee was the cook. Claimant said that employee took some Family Medical Leave Act time off from work at the Sheriff's office in connection with exploratory knee surgery that turned into a staph infection. Claimant testified that around the time of employee's death, their monthly expenses were $1,000 to $1,500, and they were able to save very little money.

At final hearing claimant testified that she was laid off from Nielsen Media Research on October 31, 2007. She received a severance package based on her years of employment, which ended May 22, 2008, and she said finances have been very tight since then. She has been looking for work since then, but the only work she has done is to be a substitute for her daughter on an on call basis at a pet boutique when her daughter is sick, which occurs once every two to three weeks, and for which claimant is paid $7.00 per hour for 3 hours each time. She received unemployment benefits after her layoff in the amount of $275 per week, which ended a few weeks ago. She now also receives $1,800 from the Florida retirement system on behalf of employee. She has monthly bills for electric, water, homeowners' insurance, taxes, internet

services, and a cell phone family plan. She does not have a car payment or mortgage, but drives a 1999 Voyager minivan with over 100,000 miles on it.

Claimant testified that since her severance package and unemployment benefits have ended recently she has had to make drastic budget changes and the financial situation is very tough. Her daughter has two years of college left, and her son will begin his senior year in high school in the fall. Both live with her. She said that she needs employee's income or benefits to make ends meet. Claimant said that when she left Nielsen she was making $46,300 yearly due to a raise, but thought that she made $43,000 to $44,000 per year when employee was alive and he had surpassed her in earnings, although she did not revisit what they made since her deposition testimony.

9. The payout sheet in evidence shows that E/C paid survivor benefits to claimant beginning April 4, 2006 for the period starting March 24, 2006 through July 20, 2006 in the amount of $626 per week.

10. At and/or before trial claimant withdrew the claim for compensability of hypertension. E/C agrees that employee meets the presumption contained in section 112.18, Fla. Stat. (2004), that any condition or impairment of health of any law enforcement officer caused by heart disease resulting in death shall be presumed to have been accidental and to have been suffered in the line of duty; in that employee was a correctional officer, his preemployment physical did not present evidence of hypertension or heart disease, and he died as the result of heart disease. The evidence supports that employee meets the presumption.

Thus, having met the presumption, claimant is relieved from the necessity of proving an occupational causation of the heart disease resulting in death, and this switches the burden of proof from the claimant to E/C. According to the Court in the case of *Caldwell v. Division of Retirement*, 372 So.2d (Fla. 1979), the statutory presumption can be rebutted by showing some other specific hazard or non-occupational factor was the cause of the disease. That Court noted that where the evidence is conflicting, the quantum of proof is balanced, and the presumption should prevail, which does not foreclose E/C from overcoming the presumption; however, if

there is evidence supporting the presumption it can be overcome only by clear and convincing evidence. In the absence of cogent proof to the contrary, the public policy in favor of job relatedness must be given effect, according to the Court.

The Court in the case of *City of Tarpon Springs v. Vaporis*, 953 So.2d 597 (Fla. 1st DCA 2007) held that the presumption merely switches the burden of proof from claimant to E/C, and may be overcome by, as the statute plainly states, "competent evidence". According to that Court, all that is required is competent substantial evidence that convinces a JCC that the disease was caused by some non-work-related factor, not that it was caused by any sort of "specific hazard or non-occupational hazard" as the JCC in the underlying case erroneously concluded.

Subsequently, the Court in the case of *Lentini v. City of West Palm Beach*, 980 So.2d 1232 (Fla. 1st DCA 2008), cited by E/C herein, cited *City of Tarpon Springs, supra*, and reiterated the above holding on what evidence is required, in affirming the JCC's decision that the presumption was successfully rebutted. (Per the underlying Order on Merits entered in *Lentini*, claimant had a congenital defect in the electrical system of his heart and the JCC found that this defect, and not an exposure or event, either work-related or non-work related caused his arrhythmia).

More recently, in the case of *Butler v. City of Jacksonville*, 980 So.2d 1250 (Fla. 1st DCA 2008), the Court held that the presumption switches the burden of proof from the claimant to the employer and may be overcome by clear and convincing evidence that the disease was caused by a specific non-work related event or exposure, citing *Caldwell, supra.* That Court further found that employer did not present any evidence, let alone clear and convincing evidence that the claimant's peripheral vascular disease was caused by a specific non-work-related event or exposure. Justice Kahn concurred with the decision but did not agree with the majority's inclusion of the sentence regarding the employer's failure to meet the burden; he said it was both dicta and in conflict with their holding in *City of Tarpon Springs, supra*, regarding the competent evidence standard being applicable.

11. In this case, E/C has not met its burden, whether that burden is competent substantial evidence or clear and convincing evidence, as they have not shown that employee's coronary artery disease, or arteriosclerosis, was caused by some non-work related factor. Considering the totality of testimony from both IME physicians, the opinions are not that different in several important areas. Both doctors (and the medical examiner) agree that employee died from sudden cardiac death resulting from coronary artery disease. Both doctors agree that employee's prior medical records contain no evidence of preexisting coronary artery disease. Both doctors agree that a risk factor is not the same as a cause for a disease, and that there are persons with many risk factors who never get heart disease, and persons with no risk factors who do get heart disease. Both doctors agree that employee's duties as a correctional officer would result in psychosocial stress, although Dr. Glasser feels that the employee's job exposure of only two and one-half years is insufficient. Dr. Mathias concedes that it is fair to say employee's atherosclerosis existed at the time he became employed with Pinellas County, and Dr. Glasser concedes that he can't say what the direct cause of employee's coronary artery disease was, and that he cannot absolutely rule out his job as a factor.

Their opinions differ in several areas as well; Dr. Glasser felt that employee's abnormal lipids were a risk factor, that his chronic knee pain and infections would cause psychosocial stress, and that his coronary disease preexisted his employment and followed a normal 30 to 40 year progression. Dr. Mathias felt it was unlikely that an infected knee would be the genesis of coronary artery disease, but conceded that chronic pain could cause psychosocial stress, and he felt employee's lipids were not that far from abnormal (however, he did not have claimant's private medical records). Dr. Mathias said that everyone has atherosclerotic disease but for that to develop into overt heart disease is a different matter, and it develops by episodic flare-ups where one has what is called a thin cap fibroatheroma, which causes a worse blockage in that area, and this can happen in a matter of days or weeks and does not require years to develop. Thus, neither doctor was able to say what the direct cause of employee's coronary artery disease was, and they had differing opinions about his risk factors, but both agree that risk factors are not

causes of the disease. Although Dr. Glasser opined that employee's employment was not the cause of his disease or death, this is insufficient to sustain E/C's burden without an opinion as to the non-work-related causative (not risk) factor.

E/C argues that the opinion of Dr. Glasser that employee's disease was chronic, followed a normal progression, that he died at the mean age for heart disease, and that his employment was not a factor in his heart disease and death is competent evidence to rebut the presumption under the *Lentini* case cited previously. However, as noted above, the employee in that case had a congenital heart defect and it was found that neither work nor non-work related factors caused the problem. Here, the fact that employee's coronary artery disease may have preexisted his employment does not eliminate the possibility of work related aggravation, *See, City of Temple Terrace v. Bailey*, 481 So.2d 49 (Fla. 1st DCA 1985), and there is no evidence that suggests that employee suffered any congenital heart disease present from birth.

To the extent that they differ, I accept the opinions of Dr. Mathias over those of Dr. Glasser as being more consistent with logic, reason, and the remaining evidence in this matter. Both doctors agree that one's reaction to events that cause psychosocial stress impacts whether the stress is a risk factor. Despite employee's long history of knee and gastric problems, none of the evidence indicated that he was negatively affected in his activities of daily living (other than during periods of recuperation from surgery or hospitalizations for infection). He maintained an active lifestyle; scuba dived, had a motorcycle, worked out at a gym, and lifted weights. He was able to pass the physical requirements to become a corrections/detention deputy. There was no complaint in his medical records of any heart related problems such as pain, shortness of breath, or any other symptom that might have accompanied his disease. While this was noted to be not unusual by both doctors, it supports Dr. Mathias' testimony that blockages can occur in days or weeks. Dr. Mathias noted employee's heart was significantly heavier than it should be when he died. Contained within the medical records reviewed by Dr. Glasser is a May 19, 2003 chest x-ray report that indicates employee's heart size is normal, and this also suggests an employment

aggravation as opposed to a natural progression. Further, there is nothing in the statute that requires employment for any particular period of time for the presumption to apply.

Based upon the foregoing, claimant's employee's heart disease that resulted in death is compensable.

12. Because the claim is compensable, E/C should pay funeral expenses as requested in the amount of $7,361.00 per section 440.16(1)(a), Fla. Stat. (2004). Penalties and interest are not due on late payment, because funeral expenses, like medical expenses, are not "compensation" as defined by section 440.02, Fla. Stat. (2004), and are thus not subject to penalties and interest. *See, Whiskey Creek Country Club v. Rizer*, 599 So.2d 734 (Fla. 1st DCA 1992).

13. Section 440.02(26), Fla. Stat. (2004) defines "Spouse" as including only a spouse substantially dependent for financial support upon the decedent and living with the decedent at the time of the decedent's injury and death, or substantially dependent upon the decedent for financial support and living apart at that time for justifiable cause. Claimant herein was living with the decedent at the time of his injury and death. To sustain her burden of proof, the claimant must show that she is dependent on the deceased for support; that actual and substantial support were received by her from the deceased; and that such support was made regularly with the reasonable expectation that it would be made in the future. The test is whether the claimant relies on the contributions to maintain her customary standard of living, and whether, in the absence of continuance of support, the lifestyle of the claimant would be materially altered. *See, General Electric v. DeCubas*, 504 So.2d 1276 (Fla. 1st DCA 1986).

In this case, claimant received actual and substantial support from employee, as he contributed all but enough for a motorcycle and insurance to the joint checking account. He contributed these substantial amounts during the marriage thus they were made regularly, and claimant had the reasonable expectation that they would be made in the future. Claimant relied on the contributions to maintain her customary standard of living, as she testified that they were

able to save very little money, and per her testimony, in the absence of the continuance of his support her lifestyle will be materially altered.

E/C cites *Terrinoni v. Westward Ho*, 418 So.2d 1143(Fla. 1st DCA 1982), and *Carroll Steel Erectors v. Alderman*, 599 So.2d 181 (Fla. 1st DCA 1992) in part for the proposition that receipt of benefits such as life insurance is relevant to the evaluation of dependency. However, both of those cases involved parents seeking dependency benefits from a deceased child, not a spouse seeking benefits. Section 440.16(1)(b)4., Fla. Stat. (2004) regarding dependency benefits to the parents of a decedent provides that the parents' benefits shall not exceed 25 percent to each, such compensation to be paid *during the continuance of dependency* (emphasis added). Section 440.16(1)(b)1., Fla. Stat. (2004) regarding benefits to the spouse, does not contain this limiting language, but instead provides that the dependency benefits will cease upon the spouse's death, and subsection 2. allows for a surviving spouse with children who has remarried to receive a lump-sum payment equal to 26 weeks of compensation at the rate of 50 percent.

Instead, for a spouse (and for children), the relevant inquiry is dependency at the time of the accident, not at the time of the hearing. Dependent rights are not lost by a subsequent change in the spouse or children's financial position, nor by any change short of the events expressly terminating compensation by statute. *See, Wise v. E.L. Copeland Builders*, 435 So.2d 339 (Fla. 1st DCA 1983), in which the Court, relying on 2 Larson, *The Law of Workmen's Compensation*, section 64.43 at 11-209—11-213, declined to accept *Terrinoni, supra*, as persuasive authority in a case involving dependent children and not dependent parents. Therefore, claimant's receipt of life insurance proceeds herein is not relevant to the inquiry of her dependence on employee at the time of his accident and death, as those proceeds were not received until several months later.

14. Based on the above, claimant has shown that she is a dependent spouse upon employee pursuant to section 440.16. The parties agree that the children meet the definition of dependent, which is supported by the evidence. Therefore, E/C should pay claimant and her and employee's two children dependent benefits on account of employee's death per section 440.16(b)2, Fla. Stat. (2004) until the benefits are exhausted or cease, whichever occurs first,

pursuant to the terminating events contained in section 440.16. Penalties and interest are due for any late payments, and E/C is entitled to credit for the dependency benefits previously paid.

15. Counsel for claimant is due an attorney fee and taxable costs at E/C's expense pursuant to section 440.34(3)(b) & (c), Fla. Stat. (2004), and jurisdiction should be retained to address the amount. The claim for fees and costs per section 440.32 should be denied as there has been no showing that E/C's defenses were maintained or continued without reasonable ground or frivolously, or for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

WHEREFORE, based upon the foregoing, it is **ORDERED AND ADJUDGED:**

A. The claim for compensability of employee's heart disease and death is compensable.

B. E/C shall pay funeral expenses in the amount of $7,361.00. No penalties and interest are due on this amount.

C. E/C shall pay claimant and her and employee's two children dependent benefits per section 440.16(b)2, Fla. Stat. (2004) until the benefits are exhausted or cease, whichever first occurs, pursuant to the terminating events contained in section 440.16. Penalties and interest are due for any late payments, and E/C is entitled to credit for the dependency benefits previously paid.

D. E/C shall pay counsel for claimant an attorney fee and taxable costs related to the benefits secured per section 440.34, and jurisdiction is retained to address the amount. The claim for fees and costs at E/C's expense per section 440.32 is denied.

DONE and ORDERED in chambers in Sarasota, Florida.

Diane B. Beck

Diane B. Beck
Judge of Compensation Claims
Division of Administrative Hearings
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(941) 753-0900

I CERTIFY that the foregoing Final Compensation Order was entered and a copy served by mail or e-mail on each party and counsel at the addresses below on June 27, 2008.

Jane Burton
Secretary to Judge of Compensation Claims

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