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

Frank McKamey, Employee/Claimant, vs. State of Florida Fish and Wildlife Commission/Division of Risk Management, Employer/Carrier/ Servicing Agent.	)	OJCC Case No. 06-028854JJL Accident date: 10/10/2005

FINAL ORDER

AFTER DUE NOTICE to the parties, a Final Hearing on this matter was commenced and recessed in Tallahassee, Leon County, Florida on November 15, 2007, and subsequently reconvened on December 17, 2007. The parties were represented by counsel as indicated below, The undersigned Judge of Compensation Claims has jurisdiction of the parties and the subject matter.

At the final hearing, the Claimant sought the following benefits:

1. Compensation for temporary total or temporary partial disability (TT/TPD) benefits from October 10, 2005 and continuing;

2. Determination of the Claimant's correct average weekly wage (AWW) and corresponding compensation rate;

3. Such further medical treatment as the nature of the

injury and the process of recovery requires; to wit: authorization of care and treatment by a board-certified cardiologist;

4. Interest and penalties on all past due payments of compensation;

5. An attorney's fee for Claimant's counsel of record; and

6. The cost of these proceedings.

The Claim was defended on the following grounds:

1. The Statute of Limitations has run on the claim;

2. There has been no accident or injury within the course and scope of employment;

3. Claimant has not followed nor exhausted the grievance procedure under managed care;

4. Claimant's condition is due to natural causes unrelated to his employment;

5. Claimant's condition pre-existed his employment;

6. Claimant's condition pre-existed the Claimant's claimed date of accident;

7. Claimant never requested medical treatment for the claimed date of accident;

8. Claimant has not provided any medical records/reports of disability;

9. Claimant has not provided any medical records/reports of any injury or accident occurring on the claimed date of accident;

10. Employer/Carrier denies Claimant's entitlement to penalties, interest, costs and attorney's fees at their expense.

11. The injury is not compensable;

12. The claimed accident is not compensable;

13. Any claimed accident is not the major contributing cause of the injury or condition alleged;

14. Any claimed injury is not the major contributing cause of the condition;

15. Claimant's heart condition is not compensable under section 112.18, Florida Statutes;

16. Claimant is not disabled; and

17. There are no indemnity disability benefits are due.

The parties have entered into the following stipulations:

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

2. Venue properly lies in Franklin County, Florida and by agreement of counsel this matter was heard in Leon County, Florida.

3. Notice of Hearing was properly furnished and received as required by the Workers' Compensation Law.

4. On October 10, 2005, the Claimant was employed by the captioned Employer.

5 Employer/Carrier agrees to file a Thirteen Week Wage Statement for date of accident of 10/10/2005 and, in the event the date of disablement is found to be one other than the date of accident alleged in the Petition for Benefits (PFB) then, in that event, the Employer/Carrier shall file an additional Thirteen Week Wage Statement for that date of accident.

6. The parties agree that for the date of accident of 10/10/2005, the Claimant's base average weekly wage (AWW) was $1,006.62 and that the value of fringe benefits was $181.71 per week ($166.71 for health benefits and $15.00 for CJIP), for a total of $1,188.33 per week yielding a compensation rate (CR) of $671.07 per week.

7. The following facts were stipulated into evidence at the trial:

a. If the claim is found compensable, the AWW and yielding CR will be calculated based upon 13 weeks immediately preceding the date of disability as established by the Judge of Compensation Claims. If the parties are unable to do so, then the undersigned judge shall resolve that issue;

b. The Claimant began work with this Employer as a Marine Mechanic in 1979;

c. The Claimant had a pre-employment physical on February 5, 1986;

d. The Claimant was appointed a Marine Patrol Officer on May 5, 1986;

e. The Claimant entered the state's Deferred Retirement Option Program (DROP) on July 1, 2001; and

f. The Claimant retired on June 30, 2006.

At the trial of this cause, the following Exhibits were admitted into evidence.

Claimant's Exhibits

1. Petition for Benefits filed 5/3/2007.

2. Deposition of Dr. Patrick Mathias, M.D. taken on 8/17/2007, together with attachments.

3. (Proffered only) Deposition of Dr. Michael A. Nocero, Jr., M.D. taken 11/2/2007, in the matter of Charles M. Peal, Jr. v. Washington Correctional Institution, OJCC Case No.: 07-008264LAR [Employer/Carrier's Motion in Limine was granted in that said deposition was taken in another matter in another district where the parties were different than the parties here and defense counsel in this was not present.]

Employer/Carrier's Exhibits

1. Deposition of Dr. Michael A. Nocero, Jr., M.D. taken 9/17/2007, together with attachments. [Claimant's objection to

medical deposition of Dr. Nocero was overruled since he was the Employer/Carrier's Independent Medical Examiner (IME).]

2. Response to PFB dated 6/19/2007.

Joint Exhibits

1. First Report of Injury or Illness dated 6/13/2007.

2. Deposition of Cindy Mills Hoffman, together with attachments.

3. Deposition of Elizabeth Smith, together with attachments.

4. Pretrial Stipulation and Order entered 9/6/2007, together with Supplement Pretrial Stipulation of the parties.

The following individuals testified in person before me:

1. Eric Johnston, Administrative Lieutenant with Florida Fish and Wildlife Commission.

2. Earl Whaley, Captain, Florida Fish and Wildlife Commission.

3. Donald Ray Smith, Captain, Florida Fish and Wildlife Commission.

4. Frank Edward McKamey, the Claimant.

After due consideration of this matter and after having the opportunity to review and consider the aforesaid exhibits which were admitted into evidence, and having observed and considered the candor and demeanor of the witnesses who appeared and

testified before me, and having endeavored to resolve all conflicts of facts in the evidence presented herein, I hereby make the following findings of fact and conclusions of law:

1. The undersigned judge of compensation claims has jurisdiction of the parties and the subject matter of this claim;

2. The stipulations entered into by and between the parties herein are hereby approved and adopted as findings of fact and are incorporated herein by reference;

3. In my determination herein I have attempted to distill the testimony and salient facts together with the findings and conclusions necessary to the resolution of this matter. I have not necessarily attempted to summarize the substance of the claimant's testimony or the testimony of any live or deposition witness, nor have I attempted to state nonessential facts. Because I have not done so should not be construed that I have failed to consider all of the evidence.

4. Any and all issues raised by way of the petition or petitions for benefits which are the subject matter of the final hearing, but which issues were not tried at the hearing are presumed resolved, or in the alternative, deemed abandoned by the employee/claimant and therefore **denied.** *See* Betancourt v. Sears Roebuck & Co., 693 So.2d 253 (Fla. 1st DCA 1997).

5. On October 10, 2005, the captioned Claimant, Frank Edward McKamey, who is 61 years of age and a high school graduate, was employed by the captioned Employer as a Marine Patrol Officer with the State of Florida, Fish and Wildlife Commission (FWC). He first became employed with this agency in 1979 as a Marine Mechanic. Prior to his appointment as a Marine Patrol Officer in 1986, he underwent a pre-employment physical with the Commission on February 5, 1986. His last position with the FWC was as First Mate and Boarding Officer on the vessel "JJ Brown." His primary duties consisted of law enforcement, and his secondary duties consisted of maintenance of the vessel.

6. At the Final Hearing, the Claimant's testimony consisted primarily of describing his duties and experiences as a Marine Patrol Officer. He testified in length as to the stressful rigors and dangerous nature of maritime law enforcement and his search and rescue duties over a period of 20 years. I find Mr. McKamey's testimony in regard to his FWC work experiences and activities, and the effect it had on him, to be truthful and credible. He indeed has render a valuable and worthy service to the State of Florida during his 20 years of service and is to be commended for his work and dedication.

7. The Claimant testified that prior to his appointment as a Marine Patrol Officer he had to undergo a pre-employment

physical examination, which was performed on February 5, 1986. The pre-employment physical report shows that three or four different blood pressure readings were taken and noted. Some of the readings are described as elevated by the medical testimony and the column for that entry was checked "abnormal" and the section for comments on abnormalities states "B.P. needs follow-up." However, the actual entry in the report for systolic and diastolic readings shows "130/70" which both of the medical experts testifying in this case said is a normal blood pressure. Dr. Michael A. Nocero, Jr., M.D., the Employer/Carrier's Cardiological IME, and Dr. Patrick Mathias, M.D., the Claimant's Cardiological IME, both stated that the systolic reading of 130 and the diastolic reading of 70 are considered within normal limits and this reading was the one entered into the "field" on the pre-employment physical examination report. Dr. Mathias indicated that the elevated blood pressure notations on the pre-employment physical report indicated that Mr. McKamey might have been nervous or anxious when his blood pressure was taken, and that after he calmed down his blood pressure came down. It appears that Dr. Nocero concurred with Dr. Mathias' opinion when he said that the difference in readings was possibly related to "white coat" syndrome.[1] Therefore, even though section

[1] Dr. Nocero describes this as a condition where people "get so nervous and excited when they come in to get their blood pressure taken or to see the physician..." that their blood pressure

112.18(1), Florida Statutes, requires the successful passing of a pre-employment physical examination and that such examination fails "to reveal any evidence of any such condition (hypertension)", the medical testimony of both Dr. Nocero and Dr. Mathias shows that there was no evidence on the pre-employment physical reflecting either "essential hypertension or heart disease." Moreover, the Claimant's EKG at the time of his pre-employment physical was also normal. In other words, according to Dr. Mathias the elevated blood pressure readings were simply an indication that they should be followed up to determine whether Mr. McKamey had an issue with hypertension, not that there was specific evidence of such condition at the time of the pre-employment physical. Mr. McKamey was appointed a Marine Patrol Officer shortly thereafter.

8. Mr. McKamey testified and the medical evidence indicates that on a hot Labor Day on November 2, 1991, while off work, he was operating a backhoe for a couple of hours when he suffered an acute inferior wall myocardial infarction (heart attack). Since then he has had multiple cardiac catherizations and angioplasties. He has a history of arrhythmias and suffers "essential hypertension".[2] In addition, the Claimant suffers from hyperlipidemia, which is high cholesterol and a risk factor

goes up.

[2] According to Drs. Nocero and Mathias "essential hypertension" is high blood pressure, the cause of which is unknown.

for coronary artery disease. The Claimant also suffers from lumbo-sacral spinal osteoarthritis, cervical spinal osteoarthritis, gastroesophageal reflex disease (GERD), esophageal cancer and colon polyps. These were all diagnoses made by Dr. Nocero after evaluating the Claimant at the request of the Employer/Carrier on 8/6/2007 and corroborated by the Claimant's testimony.

9. Based on the evidence presented, I find that Mr. McKamey up until his retirement from the agency on 6/30/2006 was a Law Enforcement Officer as defined in section 943.10(1), (2), or (3), Florida Statutes. During the period of his employment, he suffered a heart attack and thereafter has been diagnosed with coronary artery disease and hypertension. Having successfully passed his pre-employment physical examination prior to entering into law enforcement service with the Florida Fish and Wild Game Commission, which pre-employment physical examination failed to reveal any evidence of hypertension or heart disease, Mr. McKamey is eligible to have those conditions statutorily presumed to be an occupational disease and work-related according to section 112.18(1), Florida Statutes.

I find that the Employer/Carrier here failed to sustain its burden of proof of overcoming the statutory presumption by competent substantial evidence that the Claimant's coronary

artery disease or hypertension was caused by "some non-work-related factor[3]." First, the Claimant suffers from essential hypertension which by definition, the cause if unknown. As to the Claimant's coronary artery disease, although the defense presented various "risk factors" indicated by a 1987 coronary risk profile which contribute to heart disease, such risk factors do not equate to the actual cause of the disease[4]. Mr. McKamey testified that he had stopped smoking for 25 years and therefore, according to Dr. Mathias this was no longer a risk for developing the heart disease suffered by the Claimant. As Dr. Mathias explained "risk factors" are merely statistical correlations and would increase the "probability that an individual is going to get coronary artery disease." However, the presence of such risk factors does not inevitably mean that a person will have such disease, since that may occur with or without risk factors. Even Dr. Nocero agreed that risk factors do not always lead to a specific result and he could not rule out that the Claimant's work activities as a "contributing or aggravating cause" for his heart disease and hypertension. Finally, there is no scientific way of determining which risk factor, or combination thereof, "cause" coronary artery disease.

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[3] This is the standard of proof the Employer/Carrier has in overcoming the law enforcement officer presumption under section 112.18, Fla. Stat. (2005) as explained in City of Tarpon Springs v. Vaporis, 953 So.2d 597 (Fla 1st DCA 2007).

[4] The risk factors presented consisted of hyperlipemia, essential hypertension, and history of smoking.

I am not convinced by the Employer/Carrier's arguments and presentation in this regard sufficiently to overcome the legislative intent and the statutory presumption for providing compensability of certain health conditions to a defined class of public servants.

10. Section 112.18(1) provides as follows:

> "Any condition or impairment of health of any Florida State … law enforcement officer … as defined in s. 943.10(1), (2), or (3) caused by tuberculosis, heart disease or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such fire fighter or law enforcement officer shall have successfully passed a physical examination upon entering into any such service as a fire fighter or law enforcement officer, which examination failed to reveal any evidence of any such condition ."

Generally, heart disease is not ordinarily compensable as an occupational disease. However, the Florida Legislature in enacting section 112.18(1), Florida Statutes, statutorily established a presumption that heart disease (hypertension and tuberculosis) suffered by a law enforcement officer is connected with the work activity as long as the law enforcement officer passes a pre-employment physical examination without evidence of such disease. *See* Sledge v. City of Ft. Lauderdale, 497 So. 2d

1231, 1233 (Fla. 1st DCA 1986). Therefore, a claim for the compensability of such heart disease and tuberculosis is "a claim for an occupational disease rather than an accident by injury." *Id.* It is in recognition of the special hazards and stresses placed upon law enforcement officers and other public servants during their career that the legislature enacted the statutory presumption of compensability afforded by section 112.18. Caldwell v. Division of Retirement, et al, 372 So. 2d 438, 440-441 (Fla. 1979), City of Clearwater v. Carpentieri, 659 So. 2d 357, 361 (Fla. 1st DCA 1995). This statutory presumption of compensability of a law enforcement officer's hypertension or coronary artery disease applies to the Florida Workers' Compensation Law as held in South Trail Fire Control District v. Johnson, 449 So. 2d 947 (Fla. 1st DCA 1994).

11. Having found that the Claimant is a law enforcement officer, who has been diagnosed with covered conditions consisting of coronary artery disease and hypertension, and since he successfully passed a pre-employment physical examination upon entering such service which failed to reveal evidence of such conditions; the next step under the test for compensability under section 112.18, Florida Statutes, is whether each of those conditions, standing alone, resulted in total or partial disability so as to afford Mr. McKamey coverage

under the Florida Workers' Compensation Law as an "occupational disease" pursuant to section 440.151, Florida Statutes (2003).

12. I find the en banc opinion in City of Port Orange v. Sedacca, 593 So. 2d 727 (Fla. 1st DCA 2007), to be most instructive in determining whether Mr. McKamey's hypertension or coronary artery disease, standing alone, constitute a "disability" so as to qualify as an "occupational disease" under section 440.151, Florida Statutes and benefits under the Workers' Compensation Law. If the condition of employment which causes a permanent disease does not meet the statutory requirements of section 440.151, Florida Statutes, the Claimant would not be entitled to compensation or medical benefits (coverage) under the Florida Workers' Compensation Law. *See* Sedacca at 729. Therefore, Mr. McKamey must also establish disablement before he is covered under Chapter 440.

Section 440.151(3), Florida Statutes, defines "disablement" to mean "disability as described in section 440.02(13)." That section defines "disability" 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 injury." In other words, the definition of "disability" requires "wage loss." Sedacca at 730. Thus disablement for purposes of workers' compensation turns on injured worker's ability to earn

income. City of Mary Esther v. McArtor, 902 So. 2d 942, 944 (Fla. 1st DCA 2005).

13. Following his heart attack in 1991, Mr. McKamey continued to work; although, he suffered from coronary artery disease and the symptoms thereof. He also suffered from hypertension, but I have no evidence that this caused any disability per se. On July 1, 2001, almost 10 years following his heart attack, Mr. McKamey decided to enter the state's DROP program requiring him to retire no later than 5 years later on June 30, 2006. Section 121.021(13), Florida Statutes, provides for an optional retirement program for state employees known as the Deferred Retirement Option Program (DROP), which requires mandatory retirement no later than five years from the date of the entry of said program. Mr. McKamey did, in fact, retire on June 30, 2006 after 20 years of service with the FWC.

Since Mr. McKamey had acquired a considerable amount of sick leave (earned benefits), which accumulates at a rate of 8.667 hours per month, he opted to stop working on October 9, 2005 prior to his retirement and collect his earned sick leave benefits equal to his salary. He testified that at that time he had approximately 800 to 1,000 hours in sick leave. Mr. McKamey stated that if he did not take use his sick leave benefits he would only receive 25% of the value of said benefits when he

retired. He admitted that no doctor took him off work prior to October 10, 2005 and there is no medical evidence of any work restrictions on or about the time he went on sick leave. Although he testified that he "understood" that according to his physician he should do "what he was able to do" and rest when needed, I find his declaration to be somewhat self-serving and made for the purpose of supporting his claim. I find no specific independent medical support prior to his litigation here such understanding or for taking Mr. McKamey off work on October 10, 2005 as a result of his hypertension or coronary artery disease. The Claimant stopped working on his own accord prior to retirement and I find he did so rather than lose 75% of the value of his accrued sick leave. Moreover, as Dr. Terrance P. McCoy, M.D., the Claimant's primary care physician, stated in correspondence generated at the request of Mr. McKamey seventeen days after he had stopped working and went on sick leave; that he concurred with Mr. McKamey's request for an extended leave because of his "multiple health issues, including coronary artery disease, degenerative disc disease, gastroesophageal reflux disease (GERD), hypercholesterolemia and cervical spondylosis."[5] Dr. McCoy went on further to state that Mr. McKamey was "currently being evaluated for persistent back pain

[5] After he had begun his sick leave, Mr. McKamey was asked by Beth Smith, HR Liaison for FWC, that he had furnish documentation to justify taking sick leave.

and will be reevaluated accordingly." None of the conditions described by Dr. McCoy, except for coronary artery disease, are work-related or occupational diseases. Moreover, and significantly, there is no reference to "hypertension" in Dr. McCoy's letter and there was no such supporting letter from the Claimant's treating cardiologist, Dr. Smith. I find that no doctor in October, 2005 completely took the Claimant off work. Dr. Mathias, a cardiologist, and the Claimant's IME and expert witness, who evaluated the Claimant on one occasion on May 29, 2007 after filing his claim, testified that he would have taken the Claimant "off work full-duty" as a law enforcement officer, on or about May 2, 2005 after the Claimant underwent a cardiac catherization. However, Dr. Smith, the Claimant's treating cardiologist who performed the cardiac catherization, did not take Mr. McKamey off work then or at any other time. I find insufficient credible evidence that on or about October 10, 2005, Mr. McKamey was totally incapacitated or unable to work as a law enforcement officer or in any other employment as a consequence of his coronary artery disease or hypertension. , Therefore, the date of Mr. McKamey's disablement, if any, cannot be October 10, 2005 since he was not disabled or incapacitated from work in his usual occupation at that time, and that his voluntary cessation of work was to collect his earned sick leave

benefit rather than lose 75% of the value thereof. In summary, is there no coverage under the Chapter 440 at that time because there was no disablement caused by any compensable condition. .

14. However, having said that, I find that the greater weight of the medical evidence clearly shows that after January, 2006, the Claimant was permanently incapacitated from working as a law enforcement officer. Beginning with the Employer/Carrier's IME, Dr. Nocero testified that it became evident that the Claimant could not do that type of work starting January of 2006 due to his daily angina. Dr. Nocero concurs with Dr. McKay, who placed the Claimant on medical leave beginning February 16, 2006 to June 30, 2006, the Claimant's date of retirement. Dr. Mathias, the Claimant's IME, said that the Claimant could not work full-time as a law enforcement officer as of October, 2005, but I reject his opinion in that regard as speculative at best since he did not examine Mr. McKamey then nor did Dr. Smith take the Claimant off work during that period of time. However, it appears that the physicians who testified by deposition regarding the Claimant's inability to work due to his coronary artery disease established the date of disablement by January 1, 2006.

Dr. Mathias places the Claimant at maximum medical improvement (MMI) with respect to his coronary artery disease on

5/29/2007, which was the date of his IME evaluation. I find no other medical evidence establishing an MMI date except for Dr. Mathias. Prior to his retirement the Claimant was still a FWC Law Enforcement Officer even though he was off work collecting accrued sick leave for the reasons stated above. Since the Claimant had not retired on January 1, 2006, the medical evidence indicates that he lost the capacity, because of his coronary artery disease, to work as a law enforcement officer earning the wages which he was capable of receiving. There is no indication whether he could or could not work in any other employment. Therefore, having established the required disability (wage loss) on January 1, 2006, I find that Mr. McKamey is covered under the Workers' Compensation Law and is entitled to benefits hereunder. The next question is the type of benefits and the amount of compensation to which the Claimant is entitled. Sedacca at 734.

15. As stated above, the Claimant retired from gainful employment on June 30, 2006, being forced to mandatory retirement resulting from his opting to participate in DROP on July 1, 2001, five years earlier. I find that after that date the coronary artery disease was not the major contributing cause of his incapacity to earn pre-disablement wages, but rather was due to his voluntary retirement.

16. Section 440.151(1)(c), Florida Statutes, in pertinent part provides as follows:

> "Where an occupational disease … or where **disability** or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in anywise contributed to by an occupational disease, the **compensation** shall be payable only if the occupational disease is the major contributing cause of the injury."

The word "injury" in this context can only mean loss of wages since it references the "compensation (money allowance)" to be paid.[6] Any disability (incapacity to earn wages) after June 30, 2006, was now primarily occasioned by the Claimant's voluntary retirement - the "other cause" under section 440.151(1)(c)- which is not a compensable event. Consequently, under the facts and evidence here Mr. McKamey's occupational disease (coronary artery disease) was not the major contributing cause of his loss of wage earning capacity following his retirement on June 30, 2006. There was no credible evidence that but for the Claimant's coronary artery disease he would have looked for or secured other private sector employment following his retirement from FWC.

Therefore, I find Claimant is entitled to temporary total disability benefits from January 1, 2006 to June 29, 2006 only. The claim for additional temporary indemnity benefits following

[6] Merriam-Webster's On-Line Dictionary defines injury as "hurt, damage or loss sustained."

that time through May 29, 2007, the date of MMI per Dr. Mathias, are denied for the reasons stated above[7].

17. I find the Employer/Carrier's defense of an untimely Notice of Injury and reliance on the Statute of Limitations to be without merit. With regard to the Statute of Limitations defense, the Claimant clearly and timely filed his PFB on 5/3/2007, all within two years from the date of disablement which I have found to be the date of accident here.[8] In occupational disease cases, it is the date of disability (disablement) which commences the running of the Statute of Limitations. Sledge v. City of Ft. Lauderdale, 497 So. 2d 1231, 1232 (Fla. 1st DCA 1986); American Beryllium Company v. Stringer, 392 So. 2d 1294 (Fla. 1980). Moreover, with reference to both the defenses of the running of the Statute of Limitations and failure to provide Notice of Injury as barring the subject claim, Mr. McKamey provided testimony from former co-workers and supervisors that the Employer here had actual knowledge of the Claimant's initial heart attack and coronary artery disease. Section 440.185(1)(a) provides that actual knowledge of the injury on the part Employer will not bar a claim for failure of the Employee to provide notice of injury. The Claimant here has also shown "exceptional circumstances"

[7] Only temporary indemnity benefits were claimed here.

[8] Section 440.191, Florida Statutes, provides that a petition must be filed within two years 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.

that he, as well as the Employer, did not recognize his condition as work-related. Section 440.185(1)(d). Moreover, Mr. McKamey was not aware of the nexus between his heart condition and the statutory presumption under section 112.18, until shortly before he filed his claim and provided notice.

In addition, the Employer here did not file any Notice of Injury as required by section 440.185(2), Florida Statutes, after actual knowledge of the Claimant's coronary condition, nor was Mr. McKamey provided with the informational brochure required under section 440.185(4), Florida Statutes. I find the Employer/Carrier should be estopped from raising said defenses for the reasons stated therein.

18. In regard to the claim for authorization of a cardiologist, I find the same should be provided to the Claimant since he initially has established coverage under Chapter 440. Although, no compensation benefits are awarded following the Claimant's retirement date, this does not also suspend Claimant's entitlement to medical care for his coronary artery disease which the medical evidence clearly shows is reasonable and medically necessary for said condition. Moreover, the evidence indicates that the Claimant's hypertension - although not found compensable here since it did not, standing alone, result in disability - must also be treated to effectively treat

his coronary artery disease. An injured worker may be awarded treatment for a pre-existing (or non-work related) medical condition which is not directly related to a compensable injury if that condition interferes with or retards recovery from the compensable injury. *See* Jordan v. Florida Industrial Comm., 183 So.2d 529 (Fla. 1966); Primous v. Flagler Systems, 477 So.2d 1057 (Fla.1st DCA 1985); Urban v. Morris Drywall Spray, 595 So.2d 60 (Fla 1st DCA 1991) Therefore, care by a cardiologist should be provided by the Employer/Carrier.

19. Because the Claimant prevailed on some, but not all of the issues raised in his PFB, the Claimant is entitled to an award of attorney's fees under section 440.34(3)(b), Florida Statutes, (Supp. 2003), together with reimbursement of reasonable costs, but only on such benefits obtained as were secured for the Claimant through the efforts of his attorney.

WHEREFORE, it is **ORDERED** that the Employer/Carrier:

1. Pay the Claimant compensation at a rate of $671.07 per week for temporary total disability benefits from January 1, 2006 through June 29, 2006, together with interest and penalties from the dates same became due;

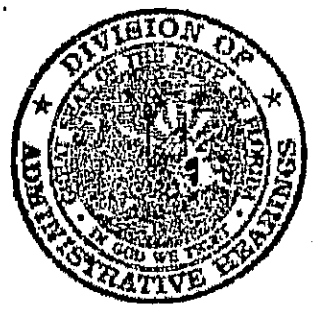
2. Furnish to the Claimant medical treatment by a board certified cardiologist for palliative care as the nature of the Claimant's coronary condition may require;

3. Pay Claimant's attorney, Stuart Christmas, Esquire, an attorney's fee at an amount to be determined at a later time; and

4. Pay the costs of these proceedings.

IT IS FURTHER ORDERED that the claim for temporary total or temporary partial disability benefits from October 10, 2005 to December 31, 2005 and from June 30, 2006 to May 29, 2007, the date of maximum medical improvement, are hereby **DENIED.**

DONE AND ORDERED at Tallahassee, Leon County, Florida.



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Certificate of Service

I HEREBY CERTIFY that the foregoing Order was entered and a true copy furnished by regular mail on this 16th day of January, 2008 to the captioned parties, ~~of~~ their attorneys if represented, at the following addresses:

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Judge of Compensation Claims

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