

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ST. PETERSBURG DISTRICT OFFICE

Terrance P. Moulton,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 07-019374LLH
)	
City of Treasure Island Fire Dept.,)	Accident date: 4/29/2007
)	
Employer,)	
)	
and)	
)	
Florida Municipal Insurance Trust,)	
)	
Carrier/Servicing Agent.)	
_____)	

FINAL COMPENSATION ORDER

THIS CAUSE was heard by the undersigned in St. Petersburg, Pinellas County, Florida, on January 3, 2008. The claims: determination of compensability under §112.18, Fla. Stat. (2005); temporary disability benefits as appropriate; authorization of a cardiologist; and penalties, interest, costs and attorney's fees, were contained in a Petition for Benefits (PFB) filed July 16, 2007. The parties participated in a mediation conference on October 2, 2007; their pretrial stipulations were accepted by Order dated November 8, 2007. Tanya A. Oliver, Esq., represented the claimant; the employer and carrier were represented by Alan D. Kalinoski, Esq.

The employer/carrier defend that no accident or occupational disease arises out of or in the course and scope of claimant's employment; the major contributing cause of any heart condition

and/or hypertension is not his employment with the City of Treasure Island; the claimant suffers pre-existing heart condition and/or hypertension that pre-dated his employment; claimant's heart condition and/or hypertension is due to factors unrelated to work; there is no medical verification of disability; and he is not entitled to penalties, interest, costs or attorney's fees. The parties did stipulate that if claimant's condition is determined compensable, they will administratively determine the amount of any indemnity benefits owed.

The following documentary items were marked and placed into evidence:

- A. Composite of Uniform Pretrial Stipulation and Pretrial Compliance Questionnaire last dated October 25, 2007; Pretrial Order and Notice of Final Hearing dated November 8, 2007; and those documents identified in Rule 9.180, Florida Rules of Appellate Procedure. (Court Exhibit #1)
- B. Deposition of Kerry Kaplan, M.D., dated December 7, 2007. (Claimant Exhibit #1)
- C. Deposition of Hall Whitworth, M.D., dated November 30, 2007. (Employer/Carrier Exhibit #1)

The claimant was the only witness to testify at this hearing. Although I will neither recite in explicit detail the witnesses' testimony nor refer to each piece of documentary evidence, I have considered the evidence in its totality, observed the candor and demeanor of the witness who appeared, and attempted to resolve all of the conflicts in the testimony and evidence. Based on the foregoing and the applicable law, I make the following findings:

1. The stipulations as entered into between the parties are hereby readopted by me as findings of fact and are incorporated herein by reference.
2. Terrance Moulton (claimant), now 54 years old, was hired by the City of Gulfport as a paramedic in 1993. Before then, he had not been diagnosed with or treated for hypertension or

coronary artery disease. A "pre-employment physical" required by Gulfport showed his blood pressure was 110/70, his EKG was "normal," and there were no abnormalities in his heart and vascular system. Thereafter, he was hired and performed the normal duties of a paramedic.

3. In 1994, Mr. Moulton became a firefighter/paramedic for the City of Gulfport. Again, he underwent a "pre-employment" physical. Though silent on the results of an EKG, it showed his blood pressure was 108/80 and there were no abnormalities in his heart or vascular systems. Thereafter, the claimant was hired to and performed the normal duties of a firefighter/paramedic.

4. When Mr. Moulton applied for work as a firefighter/paramedic for the City of Treasure Island (employer herein), he still had not been diagnosed with or treated for hypertension or heart disease. The required "pre-employment" physical administered on October 15, 1997, showed that his blood pressure was 118/82, his pulse was 80, and the rate/rhythm, sounds and pulses of his heart were normal. The report of an EKG reflected "sinus bradycardia (heart rate 56) and mild, non-specific ST-T Wave abnormalities." Following this physical examination, Mr. Moulton was hired by Treasure Island and has worked as a firefighter/paramedic with them since November, 1997.

5. While employed by Treasure Island in June, 2001, Mr. Moulton had an "episode," which led to a heart catheterization and implantation of a stent in a coronary artery. This was the first time he was diagnosed with coronary artery disease. He had another catheterization in October, 2002. Though the claimant informed his employer of his condition and treatment, they did not notify him that he might be eligible for workers' compensation benefits pursuant to §118.12, Fla. Stat. Upon recovering from the 2001 medical procedure, he returned to his normal duties as a firefighter/paramedic for the City of Treasure Island.

6. Unfortunately, on April 29, 2007, Mr. Moulton felt dizzy and sweaty when awakened

from a full night's sleep at the Fire Department to respond to a call for medical assistance. Though he did not feel well, he completed the call only to feel worse upon returning to the station. After a co-employee took his orthostatic blood pressure, the claimant was taken to the hospital in a fire engine.

7. At the hospital on April 29, 2007, Mr. Moulton underwent a cardiac catheterization and surgical implantation of stents in two coronary arteries on April 29, 2007. As instructed by his physician, he did not work return to work after the procedure until able to see a cardiologist to clear him for duty. When that occurred, on May 23, 2007, the claimant returned to his normal firefighter/paramedic duties. Fortunately, he now "feels great" but takes seven medications, including one for hypertension, prescribed by his cardiologist.

8. Section 112.18, Fla. Stat. (2005) provides that any condition or impairment of health of any Florida municipal firefighter caused by heart disease or hypertension that results in total or partial disability shall be presumed to have been accidental and to have been suffered in the line of duty, if the firefighter successfully passed a physical examination upon entering into any such service, which failed to reveal any evidence of such condition. Accordingly, the claimant must establish four elements for the presumption to apply: (1) that he is a firefighter; (2) that he developed heart disease or hypertension; (3) that he underwent a pre-employment physical that failed to reveal evidence of the claimed condition(s); and (4) that the condition resulted in temporary or permanent disability.

9. There is no question that Mr. Moulton has established he is a firefighter and has developed heart disease in the form of coronary artery disease. While the medical records do not state a diagnosis of hypertension, he is being treated for that condition.

10. The employer/carrier argue that the presumption does not apply because claimant's pre-employment physical actually revealed evidence of coronary artery disease and/or hypertension. In this regard, there is some question about which pre-employment physical, 1993, 1994, or 1997, is applicable in this case. For police and corrections officers, §943.13(6), Fla. Stat. (2007), made it the physical examination for the employer against whom the claim is made. However, the legislature did not include firefighters in this limitation of the §112.18 presumption.

11. Regardless, in this case, none of Mr. Moulton's physicals revealed evidence of heart disease or hypertension. Clearly, the reports of the 1993 and 1994 examinations express physicians' opinion that claimant's relevant systems were normal. Dr. Kaplan, a cardiologist who performed claimant's independent medical examination (IME), testified that Mr. Moulton's 1997 physical for the City of Treasure Island showed no significant heart abnormalities. He explained that though the 1997 EKG showed a heart rate of 56, it still is within the reasonable range, and that many EKGs reveal mild non-specific changes. Dr. Whitworth, the employer/carrier's cardiologist, concurred that these EKG results did not confirm the presence of coronary artery disease.

12. Likewise, none of Mr. Moulton's physicals revealed evidence that a physician or the hiring authority interpreted to be hypertension. According to Dr. Kaplan, the blood pressure levels in the 1993 and 1994 tests were within normal limits. He testified that the 118/82 reading in the 1997 pre-employment exam is considered within the normal range. Dr. Whitworth also classified claimant's blood pressure at this time as in the upper, but normal, range.

13. Dr. Whitworth did consider blood pressure readings of 140/80 on September 15, 1995, and 130/92 on November 13, 1997, taken at non-employment related medical appointments, to be elevated. However, the medical records contain no diagnosis of or treatment for hypertension at

the time of these measurements. Dr. Whitworth conceded that Mr. Moulton had not been diagnosed with coronary artery disease at either of these dates and explained how isolated incidents of elevated blood pressure do not necessarily constitute hypertension.

14. Both physicians were of the opinion that the condition of Mr. Moulton's arteries in 2001 indicated that his heart disease existed before his employment with the City of Treasure Island but neither could state it pre-existed his entry into service as a firefighter for Gulfport. Regardless, none of his pre-employment physical examinations revealed evidence of either heart disease or hypertension. Therefore, I find the claimant has established the third prong for applicability of the statutory presumption.

15. The fourth inquiry for applicability of the presumption is whether Mr. Moulton suffered either temporary or permanent disability as a result of heart disease or hypertension. As he continued to receive his normal pay after the procedure in April and May, 2007, produced no off work slip, and continues to perform his regular firefighter/paramedic duties at full pay; the employer/carrier contend that he has failed to establish he suffered temporary or permanent disability.

16. Section 440.02(13), Fla. Stat. (2007), defines disability as "incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury." However, the First District Court of Appeal has ruled that the appropriate definition of disability for firefighters who continue to receive salary while being treated for and out of work due to heart disease and/or hypertension is the event upon which the employee became actually incapacitated, partially or totally, from performing employment. *See, City of Mary Esther v. McArtor*, 902 So.2d 942 (Fla. 1st DCA 2005).

17. Mr. Moulton testified, and common sense supports, that he could not work at all, so was temporarily incapacitated from employment, when he was in the hospital undergoing a surgical procedure on his heart. Even without a doctor's note precluding him from then releasing him to work, he established that his heart condition caused him temporary disability.

18. Having met the four tests required by statute, I find that the claimant is entitled to the presumption in §112.18, Fla. Stat. (2007). Accordingly, Mr. Moulton's heart condition and/or hypertension is presumed to have been accidental and suffered in the line of duty. To rebut the statutory presumption, it is necessary for the employer/carrier to show that the disease causing disability or death was caused by a specific, non-work related event or exposure. *See, Caldwell v. Div. of Retirement*, 372 So.2d 438 (Fla. 1979). Or, as stated in *City of Tarpon Springs v. Vaporis*, 953 So.2d 597 (Fla. 1st DCA 2007), all that the statute requires to overcome the presumption is competent substantial evidence that convinces a JCC that the disease was caused by some non-work-related factor.

19. The employer/carrier argue that no accident or occupational disease arose out of or in the course and scope of claimant's employment and the major contributing cause of any heart condition or hypertension was not his employment with the City of Treasure Island. Indeed, neither doctor knew of any occupational cause for Mr. Moulton's condition. However, in *Caldwell, supra*, the court specifically recognized that the presumption supplies the element of service-connectedness and relieves the claimant from having to prove an occupational causation. "The presumption would be meaningless if the only evidence to overcome it is that there has been no specific occupationally related event that caused the disease." *Id.*, at 441. Therefore, these arguments fail.

20. In regard to non-occupational causes for his condition, Dr. Kaplan testified that Mr.

Moulton has several risk factors: previous smoker, high cholesterol, family (mother, brother, sister) history of heart disease, and being a 53 year old male, which increased his chance, or made it more likely, that he rather than another person would develop heart disease. However, as Dr. Kaplan explained, the presence of risk factors does not establish the cause of heart disease. In fact, he clarified, some patients with risk factors never develop disease and others without them do.

21. Dr. Whitworth recognized the presence of the same risk factors as identified by Dr. Kaplan, with the addition of hypertension. At first, he testified that the major contributing cause of Mr. Moulton's disease was family history, hypertension and high cholesterol. Then, in conceding these risk factors were not known to be the cause of claimant's condition, he explained that the presence of them increased the likelihood or probability that he would develop it.

22. Dr. Whitworth does not believe that stress can cause either heart disease or other than situational hypertension. He testified that there are no medical studies that show firefighters or paramedics have an increased incidence of high blood pressure or hypertension. However, "[t]he presumption contained in section 112.18(1) ... embodies the social policy of the state which recognizes that firemen are subjected during their career to the hazards of smoke, heat, and nauseous fumes from all kinds of toxic chemicals as well as extreme anxiety derived from the necessity of being constantly faced with the possibility of extreme danger. The legislature recognized that this exposure could cause a fireman to become the victim of tuberculosis, hypertension, or heart disease." *Caldwell*, at 440-441. To the degree that Dr. Whitworth's opinion that the cause of claimant's condition must be non-work related factors is based on his belief that the stress involved in firefighting would not cause it, that opinion must be rejected as inconsistent with the beneficial purposes for which the statutory presumption was enacted.

23. Neither physician in this case was able to state the cause of claimant's condition. Therefore, I find that the employer/carrier failed to establish the cause of claimant's condition was a specific, non-work related event, exposure or factor so the claimant is entitled to the presumption that his condition is compensable.

24. Finally, Mr. Moulton has worked part time as a paramedic for Sunstar Ambulance since 1990 and while employed by Gulfport and Treasure Island. The employer/carrier contend that the presumption is unavailable because he failed to eliminate his concurrent employment as the cause of his condition. However, this argument is subject to the foregoing analysis on causation. As no physician testified that his work for Sunstar constituted a specific, non-work related event, exposure or factor, this argument is rejected.

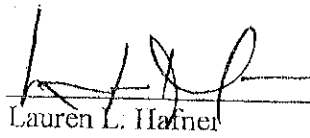
25. Both physicians testified that because he will always need medication to prevent the progression of coronary artery disease and could need further stenting or even bypass surgery, Mr. Moulton's cardiac condition will indefinitely warrant treatment. Pursuant to statutory presumption, the conditions warranting this treatment are compensable so the employer/carrier is responsible for providing medical treatment for them. That the required treatment be provided by a cardiologist is supported by the evidence.

WHEREFORE, IT IS ORDERED AND ADJUDGED:

- I. The claim for compensability of claimant's heart condition is hereby GRANTED.
- II. Based on the parties' stipulation that they could administratively determine any amounts due, the claim for temporary indemnity benefits from April 29, 2007, to May 23, 2007, as appropriate, is hereby GRANTED.
- III. The claim for authorization of a cardiologist is hereby GRANTED.

IV. The claim for attorney's fees and costs is hereby GRANTED. Jurisdiction is reserved should the parties prove unable to agree on the amounts payable.

DONE AND MAILED this ⁽⁶⁴⁾ 9th day of January, 2008, in St. Petersburg, Pinellas County, Florida.



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