

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

Aretha Reed,
Employee/Claimant,

OJCC Case No. 15-022166CMH

vs.

Accident date: 5/17/2015

Miami Dade County Corrections and
Rehabilitation/Miami Dade County Risk
Management,
Employer/Carrier/Service Agent.

Judge: Sylvia Medina-Shore

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COMPENSATION ORDER

THIS CAUSE came before the undersigned Judge of Compensation Claims for a final hearing on 12/5/16 regarding petitions for benefits (PFBs) filed 9/23/15 and 5/3/16. The claimant is represented by Kristine Callagy, Esquire. The self-insured employer is represented by Daron S. Fitch, Esquire. The instant case is assigned to JCC Charles M. Hill, III. However, due to a scheduling conflict, the undersigned adjudicated the pending claims at the 12/5/16 final hearing. Additionally, the documentary exhibits are contained within an appendix to the instant order.

Issue in Dispute:

Whether claimant suffered a disability caused by her essential hypertension as opposed to a non-occupational injury and/or medical condition?

Stipulations:

The parties stipulate claimant satisfies the below listed three out of the four elements contained in F.S. 112.18(1) for the presumption to apply:

1. The claimant is a member of the protected class under F.S. 112.18(1) namely, a correction officer.

2. Claimant developed a covered medical condition under F.S. 112.18(1) namely, essential hypertension.
3. Claimant passed her pre-employment physical with no evidence of existence of essential hypertension prior to her employment as a correction officer. *Caldwell v. Division of Retirement, Florida Division of Administration*, 372 So.2d 438 (Fla. 1979).

The parties further stipulate:

4. Claimant missed work for part of the work day on 5/17/15 and the entire day of 5/18/15. However, a dispute exists whether claimant missed work on 5/17/15 and 5/18/15 because of the covered hypertension condition. There is also a dispute as to whether claimant missed work on 5/19/15.
5. If claimant's essential hypertension is found compensable, claimant reached MMI on 4/17/16 with a 7% permanent impairment rating (PIR).
6. E/C initially availed itself of the 120 day pay-and-investigate provision and timely denied the instant claim.
7. Claimant's AWW is \$1,603.10 with a corresponding compensation rate of \$842.00.

Claims:

1. Compensability of hypertension pursuant to Florida Statute § 112.18(1);
2. Authorization of a cardiologist for treatment of hypertension;
3. Payment of permanent impairment benefits based on the impairment rating assigned by Dr. Pianko
4. Penalties, interest, costs and attorney fees (PICA).
5. Claims for TTD/TPD benefits were dismissed at the final hearing.

Defenses:

1. Claimant's hypertension and alleged heart disease are not compensable on the grounds

that claimant has suffered no disability due to a compensable condition and therefore, is not entitled to the presumption pursuant to F.S. 112.18(1). The E/SI agrees that claimant has hypertension but denies the claimant lost time from work as a result of hypertension. E/SI denies that claimant has heart disease.

2. Alternatively, E/SI argues that if claimant is entitled to the presumption pursuant to F.S. 112.18(1), the presumption is rebutted on the grounds that there are non-occupational causes of claimant's hypertension.

Findings of Facts and Conclusions of Law:

Claimant's Testimony-

1. Claimant, Officer Reed testified in person at the final hearing. She began working as a corrections officer with Miami Dade County in November 2005 after completing a pre-employment physical that did not reveal any evidence of hypertension. She is assigned to the medical office. Her duties include calling for inmates to be escorted to their medical appointments and providing protection during the medical appointments.

2. On May 17, 2015 while at work in the middle of her shift, she began experiencing tightness in her chest and a bad headache. The nurse at the jail clinic took her blood pressure and found it to be elevated. Dr. Hernandez, the doctor on duty reviewed claimant's blood pressure, administered a medication to decrease her blood pressure and told her to seek medical care.

3. Officer Reed and her supervisor (Corporal Thomas) went to Doral Urgent Care center for evaluation. On arrival, her blood pressure was 147/97 and pulse was 106 bpm. An EKG was performed and she was given Aspirin after the staff called the jail to see what type of medication she was given there. Due to her complaints, the medical staff advised her to go to Kendall Regional Hospital for treatment. Her blood pressure upon arrival at Kendall Regional

was 147/95 and pulse was 100 bpm. An electrocardiogram and labs were performed while she was there. She was discharged with instructions to take her medications as prescribed and follow up with her primary care physician.

4. On the following day of 5/18/15, Officer Reed saw her Dr. Feanny, her primary care physician (PCP). Claimant had a bad headache. She was examined by Dr. Feanny who determined she had high blood pressure. This is the first time claimant was ever diagnosed with high blood pressure. He gave claimant 2 medications. Due to her high blood pressure, Dr. Feanny provided a note restricting claimant from working for two days. Claimant was to return to work on 5/20/15.

5. Claimant followed Dr. Feanny's instructions and did not return to work until 5/20/15. Any payroll records or documentation showing she worked on 5/18/15 or 5/19/15 are incorrect or in error. In fact, claimant explained the employer's policy is to not allow any employee to return to work without a doctor's note indicating so.

6. On 5/18/15, claimant's blood pressure was still elevated at 150/100 in Dr. Feanny's office. Dr. Feanny started claimant on Irbestartan and hydrochlorothiazide that day. Additionally, Dr. Feanny placed Officer Reed on a no work status from 5/18/16 through 5/19/16, returning to work date on 5/20/16. (Deposition of Dr. Featly page 9). After viewing claimant's demeanor and the evidence, I find claimant credible.

Medical Testimony and Disputes-

7. Officer Reed filed a claim pursuant to F.S. 112.18 and the Employer/Carrier authorized Dr. Castanes under the 120 investigation period. Dr. Castanes ultimately opined that the cause of Officer Reed's hypertension was obesity and Vitamin D deficiency. Dr. Castanes also testified that Officer Reed was never disabled due to hypertension and the claim was denied on

those grounds. Officer Reed underwent an IME with Dr. Louis Fernandez who testified the cause of Officer Reed's hypertension was unknown and may have been in part due to work stress and that she was in fact disabled due to hypertension on 5/17/16. The judge appointed Dr. Leonard Pianko as the EMA to resolve the dispute between the medical providers.

8. Specifically, the JCC in the 8/1/16 final evidentiary hearing order found material disagreements exist regarding the reason behind the work restrictions placed on the claimant, the diagnosis of the claimant's cardiac conditions, the etiology of those cardiac conditions, and the degree of causation of any such cardiac conditions and the achievement of MMI.

9. Accordingly, I find Dr. Pianko was to address the questions enumerated in the 8/1/16 EMA letter including, but not limited to, the medical reason(s) for claimant's no work restrictions/status on 5/18/15 and 5/19/15 and whether the no work restrictions were caused by claimant's hypertension, heart disease, or a combination of both.

10. In his 8/24/16 EMA report, Dr. Pianko answered the posed questions as follows:

Claimant's diagnosis is systolic hypertension, probably essential hypertension; the no work restrictions placed on the claimant seemed to be based on hypertension and not heart disease. Myocardial infarction was ruled out. It is not clear that his was an appropriate restriction since the diastolic was no higher than 97. I feel patient should not have been taken out of work based on what her blood pressure reading was. She was not taken out of work for heart disease; the MCC of the cardiac condition was essential hypertension and therefore, it is work related; claimant has a risk factor of obesity however, the role of obesity is not well defined; claimant achieved MMI on 4/17/16 with a 7% PIR.

11. Dr. Pianko's deposition was taken on 10/5/16 when he clarified his EMA opinions as follows:

On 5/17/15, claimant was disabled while at the clinic and the hospital where doctors were investigating the cause of her chest pain and headache (Pgs. 29, 36); based on the ACOEM Guides for Medical Evaluation of Law Enforcement Officers, claimant's blood pressure readings did not satisfy the criteria to be taken out of work on (Pg. 13),

however the person taking care of claimant has the most say whether to take someone off or not (work) (Pg. 14); heart disease was ruled out therefore, the no work status was based on claimant's elevated diastolic pressure as high as 97 (Pg.18); per Dr. Pianko's opinion, claimant was disabled from full duty, but she should have been able to do sedentary or light duty while further evaluation and treatment was being performed (Pgs. 26, 30); from reviewing the records, claimant was taken off of work due to her elevated blood pressure (Pg. 31).

Disability-

12. Florida Statute §112.18(1)(a) requires a claimant suffer total or partial disability due to the covered condition. Section 440.151(3) defines "disablement" as disability as described in Section 440.02(13), which in turn 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 the injury.

13. The determination of disability depends not upon the employer's decision to pay the injured person's salary while he or she was incapacitated, but on the person's capacity to earn income. *City of Mary Esther v. McArtor*, 902 So.2d 942 (Fla. 1st DCA 2005). In the instant case, I accept claimant's testimony that she did not work on 5/18/15 and 5/19/15, although payroll records show earnings for 5/19/15. Even if claimant worked on 5/19/15, the undisputed evidence is she missed work on 5/18/15.

14. Disablement means the event upon which the employee becomes actually incapacitated, partially or totally, from performing his employment. *Id at 933, citing to Sledge v. City of Fort Lauderdale*, 497 So.2d, 1231, 1233 (Fla. 1st DCA 1986). Disability must be caused by the protected condition and not something else. *City of Gainesville v Beck*, 450 So.2d 309 (Fla. 1st DCA 1984).

15. The E/C make two arguments: first claimant was not disabled as only diagnostic tests were performed at the urgent care center and hospital for claimant's complaints of chest pain

and headaches unrelated to hypertension and second, claimant's no work status on 5/18/15 and 5/19/15 was solely precautionary and not due to her hypertension. The E/C rely on *Bivens v. the City of Lakeland*, 993 So.2d 1100 (Fla. 1st DCA 2008) where the court reasoned that the claimant missed work only so his condition could be diagnosed, not because it was a debilitating physical ailment.

16. In the present case, claimant was legitimately concerned regarding the constellation of symptoms she was feeling at work: chest pain and headaches with a high blood pressure reading. She sought medical attention at the urgent care and hospital for these symptoms. Claimant treated at Doral Urgent Care for complaints of pressure and tightness in her chest. Her blood pressure was 147/97. Claimant was not provided with any work restrictions or medication for her blood pressure. However, she was referred to the hospital. At Kendall Medical Regional Center, claimant gave same complaints. Her blood pressures were 147/95 and 132/78 but her diagnostic studies did not reveal cardiac disease issues. Claimant was discharged from care without medication for her blood pressure or work restrictions. However, she was referred to her PCP for further care.

17. Claimant's diagnosis at Doral Urgent Care and at the hospital was atypical (non-specific) chest pain. In reviewing all the medical records, Dr. Pianko opined (which opinions I accept) that the urgent care and hospital ruled out any cardiac issues causing claimant's complaints, which is the reason for claimant's discharged from their care (Pgs. 26-27). Claimant's hypertension was not treated with medication at all (Pg. 35). While claimant was not able to work while in urgent care and the hospital, Dr. Pianko opined that the primary reasons for same no-work status were her complaints of chest pain and headaches. I find the medical evidence supports claimant's missed a partial day of work on 5/17/15 so her condition could be diagnosed, requiring testing, medical evaluations, or some type of treatment. There is

no evidence from the urgent care or the hospital that claimant's blood pressure reading (hypertension) was a debilitating physical ailment on 5/17/15 causing disability. *See, Jacksonville Sheriff's Office v. Shacklett, 15 So.3d 859, 861 (Fla. 1st DCA 2009).*

18. However, I find claimant's hypertension was the cause of her no-work status (disability) on 5/18/15 and 5/19/15. Pursuant to the hospital's recommendations, claimant treated with Dr. Feanny (her PCP) on 5/18/15. By that first visit, any cardiac causes for claimant's complaints were ruled out by the urgent care center and the hospital. Claimant's reason for the 5/18/15 visit was essential hypertension. Claimant's blood pressure reading was 150/100 with a pulse of 112. Dr. Feanny prescribed anti-hypertensive medication and took claimant off work for 5/18/15 and 5/19/15.

19. Dr. Pianko opined, which opinions I accept, that claimant's no-work status was due to her hypertension as heart disease had already been ruled out (Pg. 18). While Dr. Pianko initially opined claimant's hypertension would not have caused any disability per the ACOEM guidelines, he ultimately opined he would have placed partial restrictions (disability) on the claimant. Therefore, I find Dr. Pianko's opinions support claimant had at least partial disability on 5/18/15 and 5/19/15 caused by the covered hypertension condition. *See, Rocha v. City of Tampa, 100 So.3d 138 (Fla. 1st DCA 2012).* Dr. Pianko explained imposition of sedentary work restrictions for 5/18/15 and 5/19/15 would be warranted based on claimant's diastolic pressure of 100 and to determine claimant's reaction to the new medication (Pgs. 45-46). I find Dr. Pianko's opinions are reasonable and medically sound.

20. Similar to *Rocha*, claimant was placed on medications by Dr. Feanny on 5/18/15 and while her body may have retained the physical strength and coordination to perform part of her job duties for the time she was advised by her doctor to forbear from engaging in all aspects of her work, she was nonetheless restricted from doing so as to avoid potential further injury or

death due to hypertension. To hold otherwise, the *Rocha* court indicated would encourage a claimant to ignore the advice of his doctor in fear that a panel of judges' years hence might deem the work restriction unwarranted. *Id. at 141*.

21. I find claimant was under medical work restrictions due to a covered condition and thus has satisfied the element of disablement as required by F.S. 112.18. Therefore, having met each of these elements, the burden of proof shifts to the Employer/Carrier to overcome that presumption by showing a specific non-occupational cause of the claimed condition by clear and convincing evidence. I find E/C has failed to do so.

22 While Dr. Castanes causally relates claimant's essential hypertension to her obesity and low Vitamin D, I accept Dr. Pianko's opinions over those of Dr. Castanes in this case. While obesity is a risk factor of hypertension, I accept Dr. Pianko's opinions that in the present case claimant's obesity is not the MCC of her hypertension. Likewise, I accept Dr. Pianko's opinions that the causal connection between low Vitamin D and hypertension is not thoroughly proven by studies. Simply, there has been no allegation or testimony from Dr. Pianko that the cause of claimant's s hypertension is non-occupational. Therefore, I find claimant meets all four elements set forth in F.S. §112.18. I further find E/C has failed to meet its burden and has not presented clear and convincing evidence of a specific non-occupational cause of claimant's hypertension based on the evidence.

WHEREFORE, IT IS ORDERED:

1. Claimant's hypertension is compensable pursuant to Florida Statute § 112.18(1);
2. E/C shall authorize a cardiologist for treatment of claimant's hypertension;
3. E/C shall pay claimant permanent impairment benefits based on the 7% PIR impairment rating assigned by Dr. Pianko (as stipulated to) plus statutory penalties and interest.

4. Claimant's attorney is entitled to an E/C paid attorney's fees and costs for securing the benefits herein. Jurisdiction is reserved on the amount of the fees and costs for future determination at a fee hearing, in the event the parties are unable to resolve it.

**DONE AND E-MAILED TO THE ATTORNEYS OF RECORD AND THE CARRIER
THIS 9TH DAY OF DECEMBER OF 2016. THE ATTORNEYS SHALL PROVIDE A
COPY OF THE INSTANT ORDER TO THEIR RESPECTIVE CLIENTS UPON
RECEIPT OF SAME.**



Sylvia Medina-Shore
Judge of Compensation Claims

APPENDIX CONSISTING OF DOCUMENTARY EXHIBITS

JCC-

1. Pre-trial stipulation filed 7/28/16 (DE#68).

Joint Exhibit-

- A. Deposition of Leonard Pianko filed 12/1/16 (DE#85).

Claimant-

1. Deposition of Sunya Jackson filed 12/1/16 (DE#96).
2. Deposition of Dr. Louis Fernandez filed 7/8/16 (DE#53-58).
3. Deposition of Dr. Elias Feanny filed 12/1/16 (DE#87).

E/C-

1. Deposition of Stratego Castanes filed 12/1/16 (DE#97).
2. Composite exhibits consisting of medical records from Doral Urgent Care and Kendall Regional Medical Center E/R filed 12/5/16 (DE#102).