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# Working for You

## **Mark Allen (v. Tyrone Square) Lives On for Pre-10/01/03 Cases**

In 1999, the First DCA reversed the denial of Mark Allen's petition for attorney's fees, and stated that when a specific request for reasonable and necessary medical care is made, the employer / carrier is under an obligation to provide the benefits within a reasonable time—whether or not a petition for medical benefits is ever filed. Fast forward to 2011. Judge of Compensation Claims Diane Beck, Sarasota District, ruled that the E/C does not have the luxury of ignoring a request for medical benefits contained in a Request for Assistance and then avoiding fee responsibility by timely responding to the Petition for Benefits. *Gore v. Sarasota County School Board*, OJCC# 93-000667.

In *Gore*, the E/C argued (1) that the claim for change of doctor was received May 2, 2005 and was responded to on May 11th by offering the claimant a list of names from which to choose her chiropractor; and (2) the response was well within the 21 days contemplated by section 440.34(3)(b) (1993) during which E/C may provide the benefit to avoid attorney fee liability. JCC Beck agreed that the E/C

responded within 21 days of receiving the PFB. However, the claimant sought entitlement to the fee based on section 440.34(3)(a), and the PFB in question qualified as a claim for medical benefits only.

Claimant Gore filed a Request for Assistance on April 20, 2005, of which receipt was acknowledged by E/C counsel before the filing of the PFB. For Ms. Gore's date of accident, "an award of attorney fees is authorized in medical benefits only claims unless medical benefits are furnished within a reasonable time after being specifically requested, and an employer or carrier who waits for the filing of a petition for benefits before honoring a request to furnish needed medical benefits must be prepared to incur liability for an injured worker's attorney fees. See, *Allen v. Tyrone Square 6 AMC Theaters*, 731 So.2d 699 (Fla. 1st DCA 1999)."

(Mr. Allen's accident occurred in 1994, Ms. Gore's in 1993.)

## **E/C Must Specifically Notify Claimant before Entitled to SSD Offset**

According to Judge of Compensation Claims M.R. Hill, Gainesville District, an E/C has no right to recover any offset for Social Security disability benefits against compensation benefits it owes for any time before it has perfected its right to do so. To perfect its right to take an SSD offset, the E/C must file a Notice of Action / Change asserting the offset. *Morgan v. Frank Crum Services*, OJCC# 08-003185.

In *Morgan*, the E/C never filed / served a DWC-4 notifying Claimant that it was taking a SSD offset. It argued that it was not necessary that the DWC-4 it did file specifically notify Claimant it was taking an SSD offset, but that the Notice must only indicate some type of change was being made. JCC Hill found E/C's argument without merit.

"The purpose of a Notice of Action / Change is to place the Claimant, the Employer, and the Division of Workers' Compensation, Department of Financial Services on notice of the action or change actually being made, including those involving Social Security disability offsets. See *Florida Rules of Administrative Procedure*, Rule 69L-3.009 (11)(a)."



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washout settlement  
documents.**

## Newsletter Challenge

### Subrogation

#### Did You Know . . .



We provide defense coverage in Ocala, Gainesville, Orlando, Lakeland, Tampa & St. Pete, Bradenton, Sarasota, Fort Myers & Naples. Need last-minute representation for a mediation or hearing? Just call us!

**1) True or False?** A Claimant has a statutory right to sue the person who negligently caused his/her injuries (other than the employer) for damages.

**2) True or False?** The workers' compensation carrier has a valid lien against the employee's settlement proceeds in a medical malpractice case.

**3) True or False?** The statutory right to a lien is explicit in granting the right of subrogation only for compensation and medical benefits paid or to be paid.

**4) True or False?** The Injured employee and the employer / carrier have a duty to cooperate with each other in investigating and prosecuting a poten-

tial claim against a third-party.

**5) True or False?** The carrier has a right of lien against the proceeds of an uninsured motorist policy.

Send your answers to: [maryann@youngandassociates.net](mailto:maryann@youngandassociates.net)  
An entry will be drawn at random from all correct submissions. The winner will receive a \$25 gift card.

## September Newsletter Challenge

### "Chapter 440 Math"



#### Answers to September Newsletter Challenge

- 1) \$389.07
- 2) \$765.00
- 3) \$8,500.68
- 4) \$10,750.43
- 5) \$700.00
- 6) \$4,250.00



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**1)** The Temporary Total Disability compensation rate is **\$389.07**. Multiply Average Weekly Wage by  $66\frac{2}{3}\%$ . In this case,  $\$583.57 \times .6667$ .

**2)** The Temporary Total Disability compensation rate is **\$765.00**, the Maximum Compensation Rate for 2009.

**3)** The total amount of Impairment Income Benefits Claimant will receive is **\$8,500.68**. Step I: The accident date is March 3, 2003; therefore, Claimant receives three weeks of benefits for each percentage point of permanent impairment (3 X 17 = 51) and benefits are paid at the rate of 50% of the AWTTD, \$333.35 ( $\$500 \times .6667$ ). Step II: Multiply  $\$333.35 \times .5$  for the

weekly benefit amount, \$166.68. Step III: The weekly benefit amount multiplied by 51 weeks equals the total IIBs.

**4)** The total amount of Impairment Income Benefits Claimant will receive is **\$10,750.43**. Step I: The accident date is July 7, 2007; therefore, Claimant receives two weeks of benefits for each percentage point of permanent impairment from 1% up to and including 10%, three weeks for each percentage point of permanent impairment from 11% up to and including 15%, and four weeks of benefits for each percentage point of permanent impairment from 16% up to and including 20% (20+15+8 = 43) and benefits are paid at the rate of 75% of the AWTTD,

\$333.35. Step II: Multiply  $\$333.35 \times .75$  for the weekly benefit amount, \$250.01. Step III: The weekly benefit amount multiplied by 43 weeks equals the total IIBs.

**5)** The attorney's fee due on the washout settlement is **\$700.00**. Under § 440.34 (1), attorney's fees must equal 20% of the first \$5,000; 15% of the next \$5,000; and 10% of the remaining amount of benefits secured. Multiply  $\$3,500$  by 20%.

**6)** The attorney's fee due on the washout settlement is **\$4,250.00**. A shortcut for calculating the fee is  $(\$35,000 \times .10) + \$750$ .

