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Temporary Partial Disability and DWC-19 Forms

In *Perdue v. Sebring Marine*, 36 Fla. L. Weekly D1708 (1st DCA 2011), the First District Court of Appeal held that because the employer / carrier sought to avoid payment of the requested temporary partial disability benefits on grounds that the DWC-19 forms had not been completed, the E/C had the burden to prove that it sent the forms to claimant.

Although the JCC found that claimant had established entitlement to TPD benefits, he also found benefits could not be due and owing until such time as the claimant submitted DWC-19 forms. In reaching this conclusion, the JCC found the E/C was not required to prove that the forms were provided to claimant. The First DCA determined this was error.

"Clearly, the carrier's provision of the forms is a condition precedent to the claimant's duty to return the DWC-19 forms within twenty-one days of their receipt."

Here, there was no evidence that the DWC-19 forms for the relevant time period were sent to the claimant.

Both Parties May Prevail and Be Entitled to Costs

Claimant Karen Aguilar challenged a ruling of the JCC denying her claim for prevailing party costs under § 440.34(3). *Aguilar v. Kohl's Department Stores*, No. 1D11-0767 (1st DCA 2011).

In the final order, JCC Sojourner denied authorization of medical care and payment of past medical bills, but awarded TPD benefits and attorney's fees for obtaining the TPD benefits. JCC Sojourner "also denied costs, finding 'neither party was a prevailing party.'"

The First DCA held that a JCC is not limited to finding that only one party prevailed. "The unique nature of workers' compensation proceedings . . . creates the potential for a party to be both prevailing and non-prevailing, relative to different claims in the same proceeding."

The Court further stated that "this conclusion is in contrast to analyses of 'prevailing party' for fee purposes in civil matters; but is similar to civil cases permitting both parties to recover costs where one prevails on its claim and the other on a counterclaim."

As of July 1, 2011, Practitioners Cannot Legally Dispense Some Controlled Substances

If a claimant's pain management physician is prescribing **and dispensing** oxycodone (or any other Schedule II or Schedule III controlled substance as defined in F.S. § 893.03), there is a problem.

On June 3, 2011, Gov. Scott signed HB 7095, the "pill mill bill", aimed at cracking down on clinics that frivolously dispense pain medication and feed a nationwide prescription drug abuse epidemic. The law bans most doctors who prescribe narcotics from dispensing them, requiring prescriptions to be filled at certain types of pharmacies. The law became effective July 1, 2011. It does not apply to the dispensing of complimentary drug samples, if labeled as such, without payment of a fee or any remuneration.

If you have reason to believe a claimant's authorized physician is both prescribing and dispensing Schedule II or III drugs, we suggest that you (1) make appropriate inquiries; (2) withhold payment for the medication until your questions are answered; and (3) report suspicious activity to local law enforcement.

Let us save you money
 by defending your
 claims and
 preparing your
 washout settlement
 documents.

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Newsletter Challenge

“Chapter 440 Math”

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!



Answers to July Newsletter Challenge

- 1) True
- 2) False
- 3) True
- 4) True
- 5) True



Get a free 2011 Russell H. Young & Associates mouse pad imprinted with a quick-reference statute guide. Send your request to:

sally@youngandassociates.com



1) Claimant’s date of accident is 10/10/10. His average weekly wage is \$583.57. What is the temporary total disability compensation rate?

2) Claimant’s DOA is 9/09/09. Her AWW is \$1,167.13. What is the TTD compensation rate?

3) Claimant’s DOA is 3/03/03. His AWW is \$500.00, and his Permanent Impairment Rating is

17%. He is not employed. What is the total amount of Impairment Income Benefits he will receive?

4) Claimant’s DOA is 7/07/07. Her AWW is \$500.00, and her PIR is 17%. She is not employed. What is the total amount of IIBs she will receive?

5) Claimant’s DOA is 8/11/11. His washout settlement totals \$3,500. Un-

der § 440.34(1), how much is the attorney’s fee due on this settlement?

6) What is the attorney’s fee due on a \$35,000.00 settlement? (Same date of accident.)

Send your answers to:
maryann@youngandassociates.net

An entry will be drawn at random from all correct submissions. The winner will receive a \$25 gift card.

Page Too

Our thanks to all who celebrated with us at the 66th Annual Workers’ Compensation Conference.

Congratulations to Tonya Melton with FHM Insurance Company who won the \$300 Best Buy gift card.

If you did not receive one of our mouse pads imprinted with quick-reference statutory, attorney fee calculation, and maximum compensation rate guides, see below for ordering information.



When you have the chance, take a look at Diaz v. Seminole State College, a case from the Orlando District, OJCC# 10-029629, August 4, 2011.

JCC Condry had previously granted the Employer / Carrier motion to enforce the mediation agreement. On rehearing, claimant ar-

gued that the provision in the agreement which provided the E/C two days to obtain authority and accept the agreement was an option contract which required separate consideration (something of value received by a promisor from a promisee, necessary for an agreement to be enforceable). Claimant asserted no consideration was provided for this option and therefore his decision to withdraw from the settlement precluded the agreement from becoming binding when the E/C later obtained approval to accept. JCC Condry agreed, vacated his earlier finding that a binding settlement had been reached and denied the E/C motion to enforce.



A recent JCC order of note regarding “One Time Change of Physician”, comes from JCC Beck, Sarasota District. In Young v. Manatee

County School Board (OJCC# 11-011508, August 30, 2011), JCC Beck stated that “Receipt’ does not mean the same thing as ‘service’ or ‘notice’.”

E/C defended that an alternate provider had been timely offered. Claimant asserted that the five day response time commenced on a Friday when the request was faxed to, and received by, E/C counsel. E/C countered that the response time commenced on Monday when the adjuster was notified by her counsel of the request, and that the period was extended one day because the following Monday was a legally recognized holiday. JCC Beck agreed with the E/C and found that the appointment letter was sent five business days after the E/C received notice of the request for change, and was therefore timely.