

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
WEST PALM BEACH DISTRICT OFFICE

William A. Hernandez,  
Employee/Claimant,

OJCC Case No. 14-015949MAD

vs.

Accident date: 6/20/2014

F.A.U. Police Department/Division of Risk  
Management,  
Employer/Carrier/Servicing Agent.

Judge: Mary A. D'Ambrosio

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FINAL COMPENSATION ORDER

AFTER PROPER NOTICE TO ALL PARTIES, a Final Merits Hearing was held on October 13, 2015. William Hernandez, Claimant, Jeffrey Jacobs, Esquire, counsel for the Claimant, David Benn, co-counsel for the Claimant and Jerry Hayden, Esquire counsel for the Employer/Carrier were present for the hearing.

The Petitions for Benefits at issue were filed on July 14, 2014, September 22, 2014 and October 7, 2014. Jurisdiction was reserved on the Petition for Benefits filed on October 9, 2015 as it has not been mediated and is not procedurally ripe. The Carrier filed a Notice of Denial of the entire claim on July 3, 2014.

The sole issue before me is whether the Employer/Carrier has met its burden of proof to overcome the presumption under F.S.112.18 by showing competent substantial evidence of a non-occupational cause of the Claimant's atherosclerosis.

STIPULATIONS

1. A Notice of Denial of all benefits was filed on July 3, 2014.
2. If indemnity benefits are awarded the Employer/Carrier shall receive a credit for a \$2,000 advance.
3. The parties agree to handle the AWW administratively.
4. The Claimant qualifies for the presumption afforded under F.S.112.18.

5. The Employer/Carrier previously withdrew their “reverse merger” defense.

### CLAIMS

1. Determination that Claimant’s heart disease is compensable pursuant to section 112.18, Florida Statutes (2013).
2. TTD or TPD benefits from June 20, 2014 to the present and continuing.
3. Reinstatement of sick leave.
4. Statutory interest based on late payment of compensation benefits.
5. Statutory penalties based on late payment of compensation benefits.
6. Payment of Boca Pathology, Inc. for services rendered to Claimant on June 20, 2014 and June 23, 2014.
7. Payment of Boca Radiology Group, PA for services rendered to Claimant on June 21, 2014.
8. Payment of Boca Raton EKG Readers, Inc, for services rendered to Claimant on June 21, 2014.
9. Payment of Dr. David Hevert, for services rendered to Claimant on June 23, 2014 and September 16, 2014.
10. Payment of Boca Raton Regional Hospital for services rendered to Claimant from June 20, 2014 through July 15, 2014.
11. Payment of E-Med LLP, for services rendered to Claimant on June 21, 2014.
12. Payment of Dr. Karl S. Mitchell for services rendered to Claimant on June 21, 2014 and June 22, 2014.
13. Payment of Dr. Thomas C. Bartzokis for services rendered to Claimant.
14. Payment Dr. Alexander Kulik, for services rendered to Claimant.
15. Payment of Dr. Gilbert J. Chidiac for services rendered to Claimant on June 24, 2014.
16. Payment of Dr. Kyle Young, for services rendered to Claimant on June 24, 2014.
17. Payment of Dr. Renee J. Freedman, for services rendered to the Claimant on June 25, 2014.
18. Payment of outstanding medical bills from Dr. Mark H. Rubenstein for services rendered to Claimant on June 27, 2014.
19. Payment of Dr. Rolando Rodriguez, for services rendered to Claimant on June 28, 2014.
20. Payment of outstanding medical bills from Dr. Jorge Montalvan for services rendered to Claimant.
21. Authorization and payment of Dr. Perry Krichmar, a cardiologist, to treat Claimant’s heart disease and medical conditions for which Claimant requires care to treat his heart disease.
22. Authorization and payment of prescription medications necessary to treat Claimant’s heart disease and medical conditions for which Claimant requires to treat his heart disease.
23. Attorney’s fees and costs.

## DEFENSES

1. Claimed condition(s) are not compensable within the meaning of Section 112.18(1), Fla. Stat.
2. In the alternative, the claimed condition(s) are caused by one or more non-occupational causes.
3. The Claimant's employment was and is not the MCC of the claimed condition(s), need for treatment, or functional limitations.
4. No CSE that the claimed condition(s) are compensable within the meaning of the workers' compensation act.
5. Claimed condition(s) are preexisting and or idiopathic.
6. No medical treatment has been authorized.
7. Claimed medical bills were not in default at the time the PFB was filed. The health care providers referenced in the petition for benefits have failed to submit the medical bills to the Employer as required under applicable Florida Statutes and Florida Administrative Code nor have the proper claim forms been attached to the PFB.
8. No jurisdiction over claim for "payment of services rendered to Claimant at Boca Regional Hospital on June 20, 2014. PFB only sought payment from "June 21, 2014 to July 15, 2014.
9. No jurisdiction over claim for "payment of Dr. Thomas C. Bartzokis for services rendered to Claimant." PFB only sought payment for services from 6/22/14 to 6/25/14. In the alternative, not an authorized treating physician.
10. No jurisdiction over claim for "payment Dr. Alexander Kulik, for services rendered to Claimant." PFB only sought payment for services from 6/23/14 to 6/24/14. In the alternative, not an authorized treating physician.
11. No jurisdiction over claim for "payment of medical bills from Dr. Jorge Montalvan services for rendered to Claimant." PFB only sought payment for services rendered on 8/21/14. In the alternative, not an authorized treating physician.
12. No jurisdiction over claim for "authorization and payment of Dr. Perry Krichmar, a cardiologist, to treat Claimant's heart disease and medical conditions. Not claimed by PFB. In the alternative, not an authorized physician.
13. No jurisdiction over claim for "authorization and payment of prescription medications necessary to treat Claimant's heart disease and medical conditions". Not claimed by PFB.
14. No CSE of eligibility or entitlement to TPD/TTD benefits.
15. Loss of earnings unrelated to the claimed conditions.
16. In the alternative, offset for subsequent earnings.
17. No penalties or interest due
18. No attorney's fees or costs due.

## EXHIBITS

1. Pretrial Order, Pretrial Stipulation and Amendments – Judge's Composite Exhibit

#1;

2. Pre-Employment Physical (D #165) – Claimant’s Exhibit #1;
3. Deposition of Dr. David Perloff (D #118-121) with attachments (subject to hearsay objections) – Claimant’s Exhibit #2;
4. Deposition of Martha Ellen Andrews – Claimant’s Exhibit #3;
5. Deposition of Carlene Watson – Claimant’s Exhibit #4;
6. Deposition of Bina Patel (R/C Boca Regional) (D #169) – Claimant’s Exhibit #5;
7. Records of Bartzokis. Rubenstein & Servoss (D #123) – Claimant’s Exhibit #6;
8. Billing Records Glades Medical Group/Dr. Montalvan (D #125) – Claimant’s Exhibit #7;
9. Records of Elite Health/Krichmar (D #127) – Claimant’s Exhibit #8;
10. Records of Boca Pathology, Inc. (D #129) – Claimant’s Exhibit #9;
11. Records of Boca Radiology Group (D #132) – Claimant’s Exhibit #10;
12. Records of East Coast Med. Assoc./Freeman ( D #134) – Claimant’s Exhibit #11;
13. Records of East Coast Med. Assoc./Rolando Rodriguez (D #137) – Claimant’s Exhibit #12,
14. Deposition of Dr. Rasken (D #113) – Employer/Carrier’s Exhibit# 1;
15. Final Evidentiary Order on Daubert Objection (D #170) – Employer/Carrier’s Exhibit #2;
16. Deposition of William Hernandez (D #173) – Employer/Carrier’s Exhibit #3.

#### FINDINGS OF FACT

1. The Claimant, William Hernandez, is a 56-year-old law enforcement officer, employed by Florida Atlantic University. Officer Hernandez began working for FAU as a law enforcement officer on November 9, 2001.

2. On October 29, 2001 Officer Hernandez passed a physical examination upon entering into service as a law enforcement officer with FAU which failed to reveal any evidence of heart disease.

3. Officer Hernandez does not have a family history of heart disease. He never smoked cigarettes or used illegal drugs. He was diagnosed with diabetes before his pre-employment examination, although his lab test for his pre-employment physical was negative for sugar, proteins and acetone. Dr. Michael Hirsch was Officer Hernandez’ primary care physician from 2002 through 2012. He prescribed medication to treat the diabetes. The evidence is undisputed that the Claimant’s diabetes was poorly controlled during the years prior to June,

2014. Officer Hernandez was previously diagnosed with high cholesterol and hypertension that were controlled with medications. In August, 2013, Officer Hernandez began treating with Dr. Jorge Montalvan as his primary care physician.

4. On June 20, 2014, the Claimant arrived for work at FAU and was in roll call when he began to experience the onset of increased chest pain. He was immediately taken to the Emergency Room and admitted to Boca Raton Regional Hospital for evaluation. On June 23, 2014 he underwent a cardiac catheterization by Dr. Thomas Bartzokis, which revealed a diagnosis of three-vessel coronary artery disease. On June 24, 2014, Dr. Alexander Kulik performed a three-vessel coronary artery bypass graft surgery. The Claimant was discharged from Boca Raton Regional Hospital on June 28, 2014.

5. Subsequent to his hospital discharge, Dr. Perry Krichmar, a cardiologist, assumed Officer Hernandez' care under his private health insurance.

6. Officer Hernandez was unable to work as a result of his coronary artery disease and triple bypass surgery from June 20, 2014 through December 17, 2014. He returned to work as a law enforcement officer with FAU on December 18, 2014.

7. The Claimant filed an initial Petition for Benefits on July 14, 2014 seeking compensability of his coronary artery disease pursuant to Florida Statute section 112.18. The Employer/Carrier denied the claim for compensability of the heart condition and concomitant benefits on July 2, 2014 on grounds, including but not limited to, that the Claimant's coronary artery disease is the result of one or more non-occupational causes.

8. The Claimant obtained an IME with Cardiologist, David Perloff, MD which was performed on January 6, 2015. Dr. Perloff is a Board Certified cardiologist and certified Expert Medical Advisor in the field of cardiology. He has published peer-reviewed cardiology studies in

*the American Journal of Cardiology, Journal of the American Medical Association and the New England Journal of Medicine.* Dr. Perloff is on staff at Broward Health Medical Center where he is the Director of Cardiac Rehabilitation and the principal investigator of cardiovascular research. He has previously performed independent medical examinations and expert medical examinations in cases involving the Heart/Lung Bill. Seventy percent of Dr. Perloff's independent medical examinations are for employers or carriers.

Dr. Perloff testified as to risk factors for the development of heart disease. He defined a risk factor as something that is associated with, although not necessarily causally related to, an increased risk of heart disease. Dr. Perloff testified the existence of a risk factor or factors does not mean an individual will develop heart disease. He was unable to render an opinion on the cause of the Claimant's coronary artery disease. He placed the Claimant at maximum medical improvement (MMI) on or about November 17, 2014 with a permanent impairment rating of 18%. He testified the Claimant should be under the care of a cardiologist. He testified the Claimant was unable to work from June 20, 2014 through December 20, 2014 due to his coronary artery disease.

9. The Employer/Carrier obtained an IME with cardiologist, Robert Rasken, M.D. which was performed on October 30, 2014. Dr. Rasken identified several risk factors which he believed contributed to the development of the Claimant's coronary artery disease including diabetes, high cholesterol pattern B, obesity and a prothrombin mutation. He opined that the treatment at Boca Raton Regional Hospital, and with Dr. Bartzokis, Kulik, Krichmar and follow up medical care was medically necessary and related to the coronary artery disease. He originally concluded that the major contributing cause of the Claimant's heart disease was Claimant's long-standing diabetes mellitus. He then expanded his opinion to conclude that the

Claimant's coronary artery disease was the result of one or more non-occupational factors including diabetes, cholesterol and obesity. In his opinion, the diabetes was the "least controlled and longest present". He placed the Claimant at maximum medical improvement (MMI) on October 30, 2014 with a 15% permanent impairment rating.

10. Both Dr. Perloff and Dr. Rasken opined that Officer Hernandez suffers coronary artery disease, a form of heart disease. They both agree that Officer Hernandez' coronary artery disease is the result of atherosclerosis. They both define "atherosclerosis" as the process where plaque builds up in the arteries and they agree that plaque development in the coronary arteries is coronary artery disease. They both agree that medical science does not know exactly how or why the process of atherosclerosis begins. Dr. Rasken testified that there are a lot of theories about why atherosclerosis may occur, but the exact reason is not known. Dr. Perloff testified that medical science is unable to determine how Officer Hernandez' atherosclerosis began.

11. Prior to the final hearing, the Employer/Carrier withdrew its "reverse merger" defense which was predicated on the Claimant's inability to control his diabetes. Prior to the Final Hearing, the Claimant raised a Daubert challenge to Dr. Rasken's opinion testimony. An evidentiary hearing was held on October 1, 2015 and a Final Evidentiary Order Denying Claimant's Daubert challenge was entered on October 9, 2015.

12. Carlene Watson is the Assistant Director of Administration with the FAU Police Department. She confirmed the Claimant was hired on November 9, 2001 as a law enforcement officer. His salary in June, 2014 was 58,998.97 plus health insurance. The Claimant was cleared to return to work full duty on December 16, 2014 and did return to work on December 18, 2014. The Claimant received his full salary from June 20, 2014 to December 17, 2014. The Claimant is currently employed on the day shift effective January, 2015.

13. Martha Andrews is the adjuster with the Division of Risk Management. She testified the claim was denied on July 2, 2014 on the grounds of noncompliance with hypertension and diabetic medications pursuant to records from his primary care physicians.

14. The records custodian of Boca Raton Regional Hospital was deposed and presented the bills. The records show charges from June 21, 2014 – June 28, 2014 for inpatient services totaling \$139,600.25. Additional billings were for September 19, 2014 (\$124.80), December 14, 2014 (\$124.80), March 2, 2015 (\$455.80) and June 15, 2015 (\$2,684.30).

15. The billing records of Dr. Bartzokis, Rubenstein and Servoss are in evidence showing services rendered from June 22, 2014-June 27, 2014 for a total bill of \$740.00. The bill reflects payments made by Claimant's private health carrier AVMed.

16. The billing records of Dr. Montalvan/Glades Medical Group are in evidence showing services rendered on June 30, 2014 for a total bill of \$2,018.00. The bill reflects payments made by Claimant's private health carrier AVMed.

17. The billing records of Elite Health/Dr. Perry Krichmar are in evidence showing services rendered from August 31, 2012 through February 5, 2015 for a total bill of \$4721.00. The total bill reflects pre-accident charges of \$450.00 for two visits in August, 2012. The bill reflects payments made by Claimant's private health carrier AVMed.

18. The billing records of Boca Pathology are in evidence showing services rendered June 20, 2014-June 27, 2014, September 19, 2014, December 10, 2014 and March 2, 2015.

19. The billing records of Boca Radiology are in evidence showing services rendered in June, 2014 for a total bill of \$165.00. The bill reflects payments made by Claimant's private health carrier AVMed.



20. The billing records of East Coast Medical Associates/Dr. Freeman are in evidence showing services rendered on July 14, 2014.

20. The billing records of East Coast Medical Associates/Rolando Rodriguez are in evidence showing services rendered by Dr. Freeman and Dr. Rodriguez.

#### CONCLUSIONS OF LAW

1. Any hearsay objections raised in the depositions of Dr. Perloff and Dr. Rasken are overruled.

2. The parties stipulate that the Claimant meets the presumption of Florida Statute 112.18 which sets forth the presumption of compensability when a Claimant meets four criteria.

3. When the 112.18 presumption applies, Claimant's burden of proving major contributing cause by medical evidence is fully met. Fuller v. Okaloosa Correctional Inst., 22 So.3d 803 (Fla. 1<sup>st</sup> DCA 2009). The burden then shifts to the Employer/Carrier to overcome, or rebut the presumption by showing a non-occupational cause of the claimed condition. Where the Claimant can offer no evidence of occupational causation and relies exclusively on the statutory presumption, all that is required to rebut the presumption "is competent substantial evidence that convinces a judge of compensation claims that the disease was caused by some non-work related factor, not that it was caused by any sort of 'specific hazard or non-occupational hazard'..". Lentini v. City of West Palm Beach, 980 So. 2d 1232 (Fla. 1<sup>st</sup> DCA 2008).

4. The evidence is clear from Dr. Rasken and Dr. Perloff that although an individual has a particular risk factor for coronary artery disease, not all individuals with that risk factor develop coronary artery disease. Conversely, individuals without any risk factors develop coronary artery disease without any known cause. The evidence is clear the Claimant did have several risk factors known to be associated with coronary artery disease; hypertension, high

cholesterol and diabetes. The Employer/Carrier must show that the major contributing cause or causes of the Claimant's heart disease is something other than his employment, based upon objective medical findings found through physical examination and/or diagnostic testing within a reasonable degree of medical certainty. *See, Fuller v. Okaloosa Correctional Inst.*, 22 So.3d 803 (Fla. 1<sup>st</sup> DCA 2009); *see also, Punskey v. Clay County Sheriff's Office*, 18 So. 3d 577 (Fla. 1<sup>st</sup> DCA 2009)(holding that "it is the evidence of non-industrial causation that may be found to rebut the presumption, not the mere existence of risk factors or conditions.").

5. Both Dr. Rasken and Dr. Perloff testified that there is no diagnostic test or scientific method to objectively or reliably determine if the Claimant's diabetes actually *caused* his coronary artery disease. Dr. Perloff testified that there is no diagnostic test or scientific method to objectively or reliably determine if the Claimant's diabetes contributed at least 51% to his development of coronary artery disease or if a specific risk factor or combination of risk factors caused or contributed at least 51% to the development of coronary artery disease.

6. I find that the Employer/Carrier has not met their burden of proof, with competent substantial evidence, which convinces me that Officer Hernandez' coronary artery disease was caused by the non-work-related factors of diabetes, high blood pressure and/or high cholesterol, or a combination of factors. I accept the opinions of Dr. Perloff over those of Dr. Rasken to the extent they disagree. Dr. Rasken's opinions on major contributing cause of Claimant's atherosclerosis do not comport with his testimony wherein he agrees with Dr. Perloff that the cause of the atherosclerosis that led to Officer Hernandez' coronary artery disease is unknown.

WHEREFORE, it is

ORDERED AND ADJUDGED that:

1. The Claimant's heart disease is compensable pursuant to section 112.18, Florida Statutes (2013).

2. TTD benefits from June 20, 2014 to December 17, 2014 are awarded. The parties have agreed to administratively handle the AWW/Compensation Rate and the Employer/Carrier shall be entitled to a repayment of the \$2,000.00 advance.
3. The Claimant is at MMI as of November 17, 2014 and has an 18% permanent impairment rating.
4. The Employer shall reinstate all sick leave paid to the Claimant from June 20, 2014 to December 17, 2014.
5. Statutory penalties and interest based on late payment of compensation benefits are awarded.
6. The claim for payment of the following medical bills is GRANTED:
  - a. Payment of Boca Pathology, Inc. for services rendered to Claimant on June 20, 2014 and June 23, 2014.
  - b. Payment of Boca Radiology Group, PA for services rendered to Claimant on June 21, 2014.
  - c. Payment of Boca Raton Regional Hospital for services rendered to Claimant from June 20, 2014 through July 15, 2014.
  - d. Payment of Dr. Thomas C. Bartzokis for services rendered to Claimant.
  - e. Payment Dr. Alexander Kulik, for services rendered to Claimant.
  - f. Payment of Dr. Renee J. Freedman, for services rendered to the Claimant on June 25, 2014.
  - g. Payment of outstanding medical bills from Dr. Mark H. Rubenstein for services rendered to Claimant on June 27, 2014.
  - h. Payment of Dr. Rolando Rodriguez, for services rendered to Claimant on June 28, 2014.
  - i. Payment of outstanding medical bills from Dr. Jorge Montalvan for services rendered to Claimant.
  - j. Payment of outstanding medical bills of Dr. Perry Krichmar for services rendered to the Claimant.
7. The Employer/Carrier shall authorize a cardiologist to treat Claimant's heart disease and provide all medically necessary and causally related treatment.
8. Any medical bills not listed in paragraph 5 above are denied for lack of proof of causal relationship and/or medical necessity and lack of proper documentation.
9. The Employer/Carrier shall authorize prescription medications necessary to treat Claimant's heart disease and medical conditions for which Claimant requires to treat his heart disease as recommended by the authorized cardiologist.

10. The Employer/Carrier shall pay a reasonable attorney's fees and costs to Jeffrey Jacobs, Esq. Jurisdiction is reserved as to amount if the parties are unable to agree.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 3 day of  
November, 2015.



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Division of Administrative Hearings  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Compensation Order was entered on the  
3 day of October, 2015 and that a copy thereof was electronically served on counsel.



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Secretary to Judge of Compensation Claims

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