

IN THE SUPREME COURT OF FLORIDA

Danny Rudisill,

CASE NO: SC09-1046

Petitioner,

LOWER TRIBUNAL NO: 1D08-4797

v.

Florida Highway Patrol/
Department of Highway Safety
and Division of Risk Management

Respondents

RESPONDENTS' ANSWER BRIEF ON JURISDICTION

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This is the Respondents' brief on jurisdiction in the appeal of the opinion of the First District Court of Appeal issued on May 14, 2009.

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FLORIDA FIRST DISTRICT COURT OF APPEAL

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PRELIMINARY STATEMENT

The Appellees, Florida Highway Patrol and Division of Risk Management, will be referred to as the "employer/carrier." Appellee, Danny Rudisill, will be referred to as the "claimant." The Judge of Compensation Claims will be referred to as the "JCC."

Temporary total disability benefits will be referred to as "TTD." Temporary partial disability benefits will be referred to as "TPD." Permanent total disability will be referred to as "PTD." Average weekly wage will be referred to as "AWW." Maximum medical improvement will be referred to as "MMI." Coronary artery disease will be referred to as "CAD." Florida Highway Patrol will be referred to as "FHP."

Any references to the Record of Proceedings will be referred to by the letter "R" followed by the applicable page number.

STATEMENT OF THE CASE AND FACTS

The employer/carrier agrees that the claimant's statement of the case and facts is essentially accurate, but incomplete. The employer/carrier therefore supplements the claimant's statement of the case and facts as follows.

The claimant began working for the Florida Highway Patrol in 1978. He resigned his position with the Highway Patrol on September 13, 1978. He then began a new job in another state. The claimant returned to the Highway Patrol on January 22, 1979.

The claimant noticed chest pain while working in the yard at home in October 2001. Ultimately, he underwent a cardiac catheterization and a bypass surgery.

The claimant's father died at age 50 of a heart attack. The claimant's mother had hypertension, heart disease, and three coronary bypasses. She was also diabetic. Finally, the claimant's brother had heart disease and underwent an angioplasty at age 55. The claimant has hypertension, diabetes, and high cholesterol. He smoked a pack or more of cigarettes per day for thirty years.

Dr. Patrick Mathias was the claimant's IME physician. He was unable to state that work stress caused the claimant's hypertension or his CAD. Dr. Mathias opined that the claimant's employment did not cause his diabetes, hypertension, or high cholesterol. When discussing causation Dr. Mathias answered as follows in his deposition:

"Q. Well, doctor, you just said that his blood sugar causes his coronary artery disease, am I correct?

A. Yes."

Dr. Michael Nocero, M.D. was the employer/carrier's IME physician. Dr. Nocero testified that the claimant's employment did not cause any of his conditions or diagnoses. Dr. Nocero concluded that the claimant had multiple risk factors for the onset of CAD, including high blood pressure, smoking, diabetes, and high cholesterol.

Dr. Nocero opined that the claimant's constellation of risk factors was the major contributing cause of his CAD. He noted that it would be very uncommon to have all of the claimant's risk factors yet not get CAD. A patient not having the claimant's risk factors who develops CAD is an anomaly.

Dr. Nocero opined that the major contributing cause of the claimant's 2001 hospitalization was CAD caused by a combination of all the claimant's risk factors. The synergistic effect of all of those risk factors caused the claimant to develop CAD. Dr. Nocero concluded as follows:

"Q. In your opinion, did the constellation of non-work related factors applicable to Mr Rudisill become the cause of his coronary artery disease.

A. Yes.

Q. Is that opinion stated within a reasonable degree of medical certainty?

A. Yes.

Q. In your opinion, are the work-related factors the major contributing cause of his development of the coronary artery disease?

A. No.

Q. Is that opinion stated within a reasonable degree of medical certainty?

A. Yes."

In addition to CAD, the claimant suffers from essential hypertension. Essential hypertension is hypertension of unknown cause. Both Dr. Mathias and Dr. Nocero agreed that it was not possible to determine the cause of the claimant's essential hypertension.

The claimant suffered a disability as a result of his CAD. He did not suffer a disability as a result of his essential hypertension. Dr. Mathias testified that the hypertension was non-disabling. Dr. Nocero agreed.

SUMMARY OF ARGUMENT

This Court may accept conflict jurisdiction of a citation PCA if the case cited in the PCA is pending review in the Supreme Court. The instant case was a citation case which cited *Punsky v. Clay County Sheriff's Office*, 34 Fla. L. Weekly D469 (Fla. 1st DCA March 6, 2009). This Court has not yet accepted jurisdiction of that case. Therefore, this Court cannot accept jurisdiction of the instant case.

ARGUMENT

AS THE SUPREME COURT HAS NOT YET ACCEPTED JURISDICTION OF *PUNSKY V. CLAY COUNTY SHERIFF'S OFFICE*, 34 FLA. L. WEEKLY, D469 (FLA. 1ST DCA MARCH 6, 2009), THE NOTICE TO INVOKE THE DISCRETIONARY JURISDICTION OF THE SUPREME COURT IN THE INSTANT CASE HAS BEEN IMPROPERLY FILED.

The Respondents agree with Petitioner that this Court may accept conflict jurisdiction of a citation PCA if the case cited in the PCA is pending review in the Supreme Court. A case is not "pending review" merely because a party has filed a notice to invoke the Supreme Court's discretionary jurisdiction. Rather, the Supreme Court must have *accepted* the case for review. See *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987).

The instant case was a citation PCA which cited *Punsky v. Clay County Sheriff's Office*, 34 Fla. L. Weekly D469 (Fla. 1st DCA March 6, 2009). While it is true that the adverse party in *Punsky* filed a notice to invoke this Court's discretionary jurisdiction, this Court has not yet accepted review of the case. While jurisdictional briefs have been filed, the Court has not made a decision one way or the other as to hearing the underlying merits. Thus, the instant case is not subject to this Court's discretionary jurisdiction. 515 So. 2d at 1280.

CONCLUSION

Respondents respectfully ask this Court to decline jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail to Paul A. Kelley, Esquire, 807 West Morse Boulevard, Suite 201, Winter Park, FL 32789 and Bill McCabe, Esquire, 1450 S.R. 434 West, Suite 200, Longwood, FL 32750, on this day of July, 2009.

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CERTIFICATION

I HEREBY CERTIFY that the foregoing Brief complies with the font type and size requirements designated in Rule of Appellate Procedure 9.210 on this _____ day of July, 2009.

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