IN THE SUPREME COURT OF THE STATE OF FLORIDA
TALLAHASSEE, FLORIDA

WILLIAM D. ROE,	CASE NO :	76,702
Petitioner,	1st DCA NO :	89-00847
vs	CLAIM NO :	262-48-5654
CITY INVESTING/GENERAL DEVELOPMENT CORP. and HOME INSURANCE COMPANY,	D/A :	05/04/84
Respondents.		

REPLY BRIEF OF PETITIONER

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This is an appeal from an opinion of the District Court of Appeal, First District, State of Florida, filed March 21, 1990, and an opinion of the District Court of Appeal, First District, State of Florida, denying Petitioner's rehearing, filed September 7, 1990, said Orders affirming an Order of the State of Florida, Dept. of Labor & Employment Security, Office of the Jduge of Compensation Claims, District "M", dated February 27, 1989.

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PRELIMINARY STATEMENT

The Petitioner/Claimant, WILLIAM D. ROE, shall be referred to herein as the "Claimant" or "Petitioner".

The Respondents/Employer/Carrier, CITY INVESTING/GENERAL DEVELOPMENT CORP. and HOME INSURANCE COMPANY, shall be referred to herein as the "E/C", "Respondents", or by their separate names.

The Judge of Compensation Claims shall be referred to as the "JCC".

References to the record-on-appeal shall be abbreviated by the letter "T" and followed by the applicable page number.

References to the Appendix shall be abbreviated by the letters "APP" and followed by the applicable page number.

References to the Initial Brief of Petitioner shall be referred to by the letters "IB" and followed by the applicable page number.

References to the Answer Brief of Respondents shall be referred to by the letters "AB" and followed by the applicable page number.

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

Claimant adopts and realleges the Statement of the Case and Statement of the Facts as set forth in the Initial Brief of Petitioner.

POINT ON APPEAL

IS A CLAIM FOR DISABILITY BENEFITS UNDER CHAPTER 440 TIMELY WHEN IT IS FILED WITHIN TWO YEARS OF THE DATE THAT THE E/C PROVIDES REMEDIAL TREATMENT RELATING TO THE INSERTION OR ATTACHMENT OF A PROSTHETIC DEVICE WHEN THERE PREVIOUSLY OCCURRED A TWO YEAR PERIOD WHEN NO COMPENSATION BENEFITS WERE PAID OR MEDICAL TREATMENT FURNISHED.

ARGUMENT

IS A CLAIM FOR DISABILITY BENEFITS UNDER CHAPTER 440 TIMELY WHEN IT IS FILED WITHIN TWO YEARS OF THE DATE THAT THE E/C PROVIDES REMEDIAL TREATMENT RELATING TO THE INSERTION OR ATTACHMENT OF A PROSTHETIC DEVICE WHEN THERE PREVIOUSLY OCCURRED A TWO YEAR PERIOD WHEN NO COMPENSATION BENEFITS WERE PAID OR MEDICAL TREATMENT FURNISHED.

Respondents primarily argue in their Answer Brief that Steffi Plates are not a prosthetic device. Respondents therefore argue that since Steffi Plates are not, or should not be considered to be prosthetic devices, the exclusion from the Statute of Limitations as set forth in Fla. Statute 440.19(1)(b)(1983) should not be applicable in the case at bar because no true prosthetic device is involved (AB-8, 18).

Petitioner respectfully submits that the question of whether or not Steffi Plates are a prosthetic device is not before this Court. The question of whether Steffi Plates are a prosthetic device has already been answered by the JCC in this case, and affirmed by the First DCA in it's opinion filed 3/21/90.

Specifically, the JCC, in his Order of 2/27/89, found as a matter of law that the reconstruction of a claimant's spine by the insertion of Steffi Plates is the insertion or attachment of a prosthetic device, and therefore this exempts Claimant from the Statute of Limitations (T-150).

The Respondents appealed the JCC's Order of 2/27/89, and argued on appeal before the First DCA that the JCC erred in finding that Steffi Plates constituted a prosthetic device. However, the First DCA in its opinion filed 3/21/90, affirmed the JCC's Order of 2/27/89, and specifically found that the exception to the Statute of Limitations as found in Fla. Statute 440.19(1)(b)(1983) was applicable in the case at bar (App-1, 2).

Respondents have not appealed the First DCA's affirmance of the JCC's Order finding that Steffi Plates are a prosthetic device. Therefore, the question of whether or not Steffi Plates are a prosthetic device is not a question before this Honorable Court. Further, the question of whether or not the exception to the Statute of Limitations as set forth in Fla. Statute 440.19(1)(b)(1983) is not before this Court.

The only question before this Honorable Court is whether or not Claimant's claim for indemnity benefits (temporary total or temporary partial disability benefits from 8/14/87 and continuing) is timely.

Respondents argue that the current statute has parallel, but not identical, provisions regarding limitations for compensation and limitations for remedial treatment (AB-13). Respondents argue that the Legislature has drawn a distinction through the years between the Statute of Limitations for compensation benefits and the Statute of Limitations for remedial treatment (AB-13).

Petitioner respectfully submits that at one time the Legislature did draw a distinction between the Statute of Limitations for compensation benefits and the Statute of Limitations for remedial treatment. For example, prior to the 1963 amendments, Fla. Statute 440.13(3)(b) provided that claims for medical benefits are barred unless a claim is filed therefor within two years after the last remedial treatment is furnished by the employer, or the last payment of compensation, see e.g. Iowa National Mutual Ins. Co. v Webb, 174 So.2d 21 (Fla. 1965). Additionally, prior to the amendments of 1963, Fla. Statute 440.19(1)(a) provided that a claim for compensation was barred if not filed within three years after the injury or three years of the last payment of compensation without an award being made, see e.g. Iowa National Mutual Ins. Co. v Webb, 174 So.2d 21 (Fla. 1965). Thus, a claim for medical benefits prior to 1963 was timely, if filed within two years after the last remedial treatment or the last payment of compensation, whereas a claim for compensation, prior to 1963, as timely only if filed within three years after the date of the injury or the date of the last payment of compensation, but the claimant's entitlement to compensation had no bearing on the date that the claimant last received remedial care.

Since the amendment in 1963 however, the predicate for remedial care and the predicate for compensation are the same, Watson v Delta Air Lines, Inc., 288 So.2d 193 (Fla. 1973).

Petitioner respectfully submits that under the applicable provisions of Fla. Statute 440.19(1)(a)(1983) and Fla. Statute 440.19(1)(b)(1983), the same predicate still exists for recovery of either compensation or medical payments. Specifically, Fla. Statute 440.19(1)(a)(1983) provides that:

> "The right to compensation for disability ... shall be barred unless a claim therefor ... is filed ... within two years after the date of the last payment of compensation or after

the date of the last remedial treatment ... furnished by the employer."

Fla. Statute 440.19(1)(b)(1983) provides:

> "All rights for remedial attention under this section shall be barred unless a claim therefor is filed ... within two years after the date of the last payment of compensation or within two years after the date of the last remedial attention ... furnished by the employer..."

Thus, although at one time the Legislature drew a distinction between the Statute of Limitations for compensation benefits and the Statute of Limitations for remedial treatment, it is respectfully submitted that the Legislature at the time applicable to the case at bar did not draw any such distinction.

Respondents argue that the District Court interpreted the aforementioned Statute of Limitations to apply only with voluntary payments (AB-15). Respondents argue that voluntary payments were in the nature of a waiver, and that the statute would not apply to extend the Statute of Limitations for compensation benefits where the payment of benefits was compelled by the filing of a claim (AB-15).

As argued by Petitioner in his Initial Brief, Fla. Statute 440.19(1)(a)(1977) was the statute applicable at the time of this Honorable Court's decision in Daniel v Holmes Lumber Co., 490 So.2d 1252 (Fla. 1986). Fla. Statute 440.19(1)(a)(1977) did talk about payment of compensation or remedial treatment furnished by the employer "without an award" and therefore, a distinction between remedial attention voluntarily provided by the employer/carrier and remedial treatment provided by the employer/carrier pursuant to a JCC's Order, could arguably have been drawn.

However, beginning with the amendments in 1979, Fla. Statute 440.19(1)(a)(1977) was amended, by removing the words "without an award" from the statute, see e.g. Fla. Statute 440.19(2)(a)(1979) which was renumbered Fla. Statute 440.19(1)(a) in 1983. Thus, it is respectfully submitted that since the words "without an award" have been removed from Fla. Statute 440.19(1)(a)(1977), and were not to be found in Fla. Statute 440.19(1)(a)(1983) (nor have the words been reinserted in Fla. Statute 440.19(1)(a) at any time subsequent thereto), it is respectfully submitted that any distinction between voluntary remedial treatment provided by an employer and remedial treatment provided pursuant to a JCC's Order no longer exists, at least in so far as it relates to the

timely filing of a claim for compensation benefits by a claimant.

Certainly, if the Legislature had intended that a claim for compensation benefits would be timely only if filed within two years from the date that the employer/carrier voluntarily furnished remedial treatment without an award, the Legislature would not have removed the words "without an award" from Fla. Statute 440.19(1)(a).

Further, as argued by Petitioner in his Initial Brief, a holding which would revive the two year Statute of Limitations for an employer/carrier who voluntarily provides remedial treatment to a claimant, but does not revive the two year Statute of Limitations on an employer/carrier who does not make payment on remedial treatment unless a claim is filed and an order is entered by a JCC, would reward the recalcitrant employer, and would also be contrary to one of the basic tenets of the Florida Workers' Compensation Law which requires that the Compensation Law should be self-executing and benefits should be paid without the necessity of any legal or administrative proceedings.

Respondents argue that even if the Statute of Limitations for remedial treatment could be extended by the statutory language, the Legislature clearly did not intend to allow the statute to be used to bootstrap a claimant into additional compensation benefits (AB-16).

It is respectfully submitted that Respondents are asking this Honorable Court to read something into the provisions of Fla. Statute 440.19(1)(a)(1983) that is not there. As noted previously, Fla. Statute 440.19(1)(a)(1983) clearly, equivocally and without contradiction, provides that a claimant has a right to compensation for disability if the claim is filed within two years after the date of the last remedial treatment furnished by the employer. It does not matter whether or not the date of the last remedial treatment is voluntarily paid by the employer, it does not matter whether or not the date of the last remedial treatment is furnished pursuant to an order of the JCC, and it also does not matter whether or not more than two years had transpired prior to the last date that remedial treatment was furnished to the claimant by the employer, Daniel v Holmes Lumber Co., 490 So.2d 1252 (Fla. 1986), Lafave v Bay Consolidated Distributors, 546 So.2d 78 (1st DCA Fla. 1989), Iuen v Live Wire Electric Co., 538 So.2d 1312 (1st DCA Fla. 1989), Proctor v Swingset Daycare Center, 498 So.2d 616 (1st DCA Fla.

1986).

Further, Petitioner disagrees with Respondents' contention that the Legislature did not intend to allow the statute to be used to bootstrap a claimant into additional compensation benefits. The whole pretext of the Florida Workers' Compensation Law is to compensate a claimant for lost wages, and of course, medical treatment necessitated as a result of an injury. If a claimant becomes disabled because the claimant needs to have a prosthetic device inserted or attached there is no logical reason to preclude or deny the claimant from an award of disability benefits during the period of time that the claimant is healing from any medical treatment administered in connection with the insertion or attachment of the prosthetic device.

As argued by Petitioner in his Initial Brief, this Honorable Court in Daniel v Holmes Lumber Co., supra, stated that the Florida Workers' Compensation Laws are remedial in nature and the Court should resolve any doubts as to statutory construction in favor of providing benefits to injured workers. Further, this Honorable Court stated that when the language of a statute is clear, Courts may not look beyond the plain meaning of that language. This Honorable Court further stated that it would be inappropriate to read into the statutes more obstacles for claimants than the provisions otherwise require, Daniel v Holmes Lumber Co., 490 So.2d 1252 (Fla. 1986).

As noted previously, in the case at bar, Fla. Statute 440.19(1)(a)(1983) is clear and unambiguous. The statute entitles Claimant to compensation benefits if the claim has been filed within two years from the date of the last remedial treatment furnished by the Employer.

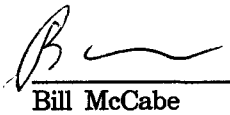
It is therefore respectfully submitted by Claimant/Petitioner that the question certified to this Honorable Court as a question of great public importance by the First DCA, should be answered in the affirmative. Specifically, it is respectfully submitted that a claim for disability benefits under Chapter 440 is timely when it is filed within two years of the date that the employer/carrier provides remedial treatment relating to the insertion or attachment of a prosthetic device, even when there previously occurred a two year period when no compensation benefits were paid or medical treatment furnished.

CONCLUSION

Petitioner adopts and realleges the Conclusion set forth in the Initial Brief of Petitioner.

Wherefore, it is respectfully requested that this Honorable Court enter an order finding that the question presented to this Court be answered in the affirmative, and that this Honorable Court enter an Order reversing the First DCA and the JCC's Order denying claimant indemnity benefits, and that this matter be remanded to the JCC for further proceedings to determine the amount of indemnity benefits to which Claimant is entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing has been furnished by regular U. S. Mail to THOMAS CASSIDY, ESQ., P. O. Box 1606, Lakeland, FL 33802, GERALD W. PIERCE, ESQ. and CHESTER H. BUDZ, ESQ., P. O. Box 280, Ft. Myers, FL 33902-0280, and to THE FLA. DEPT. OF LABOR & EMPLOYER SECURITY, DIVISION OF WORKERS' COMPENSATION, 1321 Executive Center Drive East, Tallahassee, FL 32301, Statutory Respondent, this 15th day of January, 1991.

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