

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE)
)
FLORIDA RULES OF WORKERS')
)
COMPENSATION PROCEDURE)
_____)

Case No.: SC 04-110

BRIEF IN OPPOSITION TO
ADOPTION OF PROPOSED
WORKERS COMPENSATION RULES OF PROCEDURE

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PRELIMINARY STATEMENT

This Court has before it a request by The Florida Bar Workers Compensation Rules Committee to adopt proposed rules of workers compensation procedure. The undersigned attorney has been a member of The Florida Bar since 1978 and is currently a member of The Florida Bar Workers Compensation Rules Committee. The undersigned objected to the proposed rules being promulgated by the Committee for submission to this Court for adoption and voted against those committee recommendations.

The basis for the undersigned's objection is the relevant constitutional and statutory provisions governing the adjudication of workers compensation claims as set forth in Chapter 440 and Section 440.45 Florida Statutes (2003).

SUMMARY OF ARGUMENT

The Supreme Court of Florida should decline the request by The Florida Bar Workers Compensation Procedure Rules Committee to adopt the committee's proposed rules. Pursuant to the relevant portions of Chapter 2001-91, Laws of Florida, the Florida Legislature placed the statutory authority for adoption of rules governing workers' compensation proceedings in the Deputy Chief Judge for workers compensation judges. Appropriate rules for the administration of the claims and dispute process were adopted in accordance with Chapter 120 Florida Statutes, and this Court should allow those rules to govern workers compensation hearings and claims.

The legislative reform did not interfere with this Court's authority to adopt appellate rules for workers compensation cases, but the executive branch is responsible for the promulgation of appropriate rules to govern the administrative matters.

This Court should reject the proposed rules pursuant to the legislative mandate set forth in Section 440.45(4), Fla. Stat. (2001) which provided the workers compensation rules adopted by this Court would be superseded by the rules adopted pursuant to the administrative process.

ISSUE

THE SUPREME COURT OF FLORIDA SHOULD DECLINE TO ADOPT THE RULES PROPOSED BY THE FLORIDA BAR WORKERS COMPENSATION RULES COMMITTEE.

Prior to 2001, the judges of compensation claims ("JCCs") were statutorily assigned to the Florida Department of Labor, along with the Division of Workers Compensation. During the 2001 legislative session, the Florida Legislature reorganized the Department of Labor, the Division of Workers Compensation, and transferred the JCCs to the Division of Administrative Hearings ("DOAH"). The transfer of the JCCs to DOAH was contained in Chapter 2001-91, Laws of Florida. Prior to the effective date of Chapter 2001-91, Laws of Florida, Section 440.29(3) Fla. Stat. provided:

"The practice and procedure before the judges of compensation claims shall be governed by rules adopted by the Supreme Court, except to the extent that such rules conflict with the provisions of this chapter."

Chapter 2001-91, Laws of Florida, granted authority to the newly created Deputy Chief Judge to promulgate rules and establish policies and procedures for the administration of workers compensation claims and hearings. One of the purposes of the legislation was to place the JCCs under DOAH and to have them function as administrative judges deciding workers compensation cases.

As part of the legislative reform, Section 440.45(4) Fla.

Stat. (2001) was amended to state in pertinent part:

"(4)The Office of the Judges of Compensation Claims shall adopt rules to effect the purposes of this section. Such rules shall include procedural rules applicable to workers compensation claim resolution
. The workers compensation rules of procedure approved by the Supreme Court shall apply until the rules adopted by the Office of the Judges of Compensation Claims pursuant to this section become effective."

The Deputy Chief Judge and DOAH initiated the process to adopt rules of procedure for the administration and adjudication of workers compensation claims, hearings, and related matters. The adoption of those rules was accomplished pursuant to the recognized rule-making procedures under Chapter 120, Florida Statutes, and those rules were codified at Chapter 60Q-6 of the Florida Administrative Code ("F.A.C.") on or about February 23, 2003. Rule 60Q-6.101 F.A.C. specifically states the procedural rules contained therein apply to all workers compensation proceedings before the JCCs, and replace the relevant workers compensation rules adopted by this Court.

In *Jones v. Chiles*, 638 So.2d 48, 51-53 (Fla. 1994) this Court was faced with the challenge by a workers compensation judge to a decision by the Governor not to reappoint him to office. In ruling the statute upon which the workers compensation judge relied for his reappointment was an

unconstitutional intrusion into the Governor's ability to appoint or reappoint executive branch members, this Court stated in the clearest possible manner that workers compensation judges and the adjudicatory process resided solely with the executive branch by noting:

" . . . in Florida, the legislature has chosen to place compensation claims judges within the executive branch as part of the Department of Labor. Although, in the past, this Court has acknowledged that judges of compensation claims perform a quasi-judicial function, we have repeatedly acknowledged that those judges are still members of the executive branch.

* * * * *

We find the compensation judges are executive branch officials, not judicial branch officials.

* * * * *

" . . . the legislature has chosen to place compensation judges and the adjudication of workers' compensation claims within the executive branch. If it so desired, the legislature could completely eliminate compensation claims judges as executive branch officials and place the adjudication of workers' compensation cases within the judicial branch by providing that jurisdiction of those cases is to be placed in either the county or circuit courts."

This Court's ability to adopt rules of procedure for the courts of this state arises out of Article V, Section 2(a) (2003) of the Florida Constitution. However, the ability of the Florida Legislature to direct executive branch agencies to adopt

rules for conducting hearings and procedures to be followed in administrative disputes has been recognized by this Court. *Gator Freightways, Inc. v. Mayo*, 328 So.2d 444, 446 (Fla. 1976) and *Bluestein v. Florida Real Estate Commission*, 125 So.2d 567, 568 (Fla. 1960).

When this Court adopted and approved a set of workers compensation rules in 1973, it noted those rules had been promulgated by the Industrial Relations Commission ("IRC") pursuant to the IRC's legal authority at that time to adopt rules of procedure. *In re: Workers Compensation Rules of Procedure*, 285 So.2d 601 (Fla. 1973). In 1974, this Court was given the authority, pursuant to Section 440.29, to adopt rules of procedure for workers compensation claims. However, now that the Florida Legislature has expressly placed the responsibility for adoption of those rules in an executive branch agency, this Court should recognize that legislative expression. It is the undersigned's contention the Florida Legislature in 2001 elected to return the procedure for adopting rules of procedure to the adjudicatory body responsible for hearing those claims; just as was the system in 1973.

Adoption of procedural rules for claims adjudication by DOAH and by this Court will undoubtedly create confusion and uncertainty whenever those rules are subject to interpretation or conflict with each other. That type of confusion will only

lead to additional litigation and delay, which is not necessary, will not provide any benefit to the overall workers compensation system, and would be inconsistent with the Florida Legislature's intent to streamline and standardize the workers compensation adjudication process by placing the JCCs under DOAH. The Florida Legislature clearly intended to place the workers compensation adjudication process in an agency whose sole purpose was to adjudicate disputed administrative matters.

At the present time, disputes which require adjudication under Chapter 120 are governed by Rule 28-106.101 through 106.217 F.A.C. Disputes arising under the jurisdiction of the Public Employee Relations Commission ("PERC") are governed by Rule 25-2.001 through 2.069 F.A.C. Disputes over entitlement to unemployment compensation benefits are resolved pursuant to Rule 60BB-2.022 through 2.037 F.A.C.

Each of these administrative disputes is decided under procedures adopted by the respective agency pursuant to Chapter 120, Florida Statutes. There does not appear to be any constitutional or statutory basis for this Court to conclude that it should continue to adopt workers' compensation rules of procedure in the face of the Florida Legislature's intent to have rules governing workers compensation claims adopted by DOAH, related to administrative hearings.

As this Court recognized in Royal World Metropolitan, Inc. v. The City of Miami Beach, 863 So.2d 320 (Fla. 2003), legislative intent is the polestar for statutory construction and courts look for reasons to uphold legislative acts and adopt interpretations which give effect to the Legislature's obvious policy and intent. That legislative policy and intent regarding the adoption of administrative rules relating to workers compensation claims should be recognized by this Court in this instance.

When faced with similar types of disputes, this Court has consistently recognized the role of each branch of government in the adoption of rules to govern its specific responsibilities. In TGI Friday's, Inc. v. Dvorak, 663 So.2d 606, 611 (Fla. 1995), this Court eloquently stated:

"Article V, Section 2(a), of the Florida Constitution provides this Court with exclusive authority to adopt rules for practice and procedure in the courts of this State. The Legislature, on the other hand, is entrusted with the task of enacting substantive law. In Leapai v. Milton, 595 So.2d 12, 14 (Fla. 1992), we noted that the judiciary and legislature must work together to give effect to laws that combine substantive and procedural provisions in such a manner that neither branch encroaches on the other's constitutional powers."

The public policy announced in Dvorak applies equally to the instant situation, since agency rules and regulations duly promulgated under the applicable statutes have been recognized

as having the effect of law. State v. Jenkins, 469 So.2d 733
(Fla. 1985).

Based upon the foregoing, this Court should respectfully
decline to adopt the proposed rules promulgated by The Florida
Bar Workers Compensation Rules Committee.

Deleted: Add standard on review CSE¶

CONCLUSION

Based upon the foregoing arguments and citations of authority, this Court should decline to adopt the proposed rules presented to it by The Florida Bar Workers Compensation Rules Committee. This Court should decline that request based upon Article V, Section 2(a)(2003) of The Florida Constitution and Section 440.45(4) Fla. Stat. (2001).

Respectfully submitted,

Deleted: . Leonard Courtney, 617 So.2d 439 (Fla. 1st DCA 1993) as in the case at bar there was an industrial accident followed by a motor vehicle accident. In the Cosmos Contracting case the Court held, "Where, as here, an original injury is followed by a noncompensable injury, the JCC is required to determine the extent to which each accident contributed to the injuries and to what extent benefits might yet be due on the compensable injury. Dr. Buchalter testified that Ms. Owens' disability that caused her to from light to sedentary duty would be 50% due to the back and 50% due to the neck. (Buchalter depo 8/25/03 p.15)¶

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CERTIFICATE OF TYPE FACE COMPLIANCE

I hereby certify that this Initial Brief for Appellees #2 was computer generated using Courier New 12 font on Microsoft Word, and hereby complies with the font standards as required by Fla. R. App. P. 9.210 for computer generated briefs.

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