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SUPREME COURT OF FLORIDA
TALLAHASEE, FLORIDA

DANIEL STAHL,

Petitioner,

v.

CASE NO. SC15-725

HIALEAH HOSPITAL and
SEDGWICK CLAIMS
MANAGEMENT,

Lower Tribunal: 1D14-3077

Respondents.

JURISDICTION BRIEF ON BEHALF OF RESPONDENTS HIALEAH HOSPITAL AND SEDGWICK CLAIMS MANAGEMENT

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STATEMENT OF THE CASE

Petitioner initially litigated this case for 3 years before the Judge of Compensation (hereafter "JCC") without contending the statute was unconstitutional. Before those proceedings were concluded he dismissed his Petitions for Benefits and sought Circuit Court review. The Circuit Court dismissed his claim which was appealed to the Third District Court of Appeals (hereafter "3rd DCA"). The 3rd DCA dismissed Petitioner's challenge to §440.15(3) for lack of standing. *Stahl v. Hialeah Hospital,* 54 So.3d 538, 540 (2011).

Petitioner then returned to Workers' Compensation Court and the JCC entered an order which Stahl agreed to. The order denied Permanent Partial Disability (hereafter "PPD") benefits, Permanent Total Disability Benefits, a Psychiatric Evaluation and Treatment, Penalties, Interest, Attorney Fees and Costs. Petitioner appealed to the First District Court of Appeals (hereafter "1st DCA"). In his Appellate Brief Petitioner raised several new issues. One of which was the constitutionality of the addition of a $10 co-pay funded by injured workers who had reached Maximum Medical Improvement (hereafter "MMI") under § 440.13(14)(c) Fla. Stat. (1994). The 1st DCA entered an order which *per curium* affirmed the JCC's decision. Claimant filed a motion for rehearing and

clarification. The 1st DCA granted the motion and entered the order petitioner seeks to have reviewed.

STATEMENT OF THE FACTS

Petitioner was injured in the course and scope of his employment on December 8, 2003. He received medical treatment, was placed at MMI with a 6% Permanent Impairment Rating and ultimately returned to gainful employment.

SUMMARY OF THE ARGUMENT

The Respondent concedes this Court has discretionary jurisdiction to review this case as the district court did declare §440.13(14)(c) Fla. Stat. valid. However, there is no justification for jurisdiction based on §440.13(14)(c) Fla. Stat. as Petitioner lacks standing to bring such a challenge. There is also no conflict jurisdiction as the 1st DCA opinion does not conflict with any of this Courts opinions or any other district court opinion.

Though this Court has discretion to hear this case, such discretion should not be exercised because the two statutes complained of both pass the rational basis test. Finally, under the constitutional plan the district court opinions are final and absolute in most cases and this court should exercise discretionary jurisdiction only to settle issues of public importance and to preserve uniformity of principle and practice.

ARGUMENT

POINT ONE: THIS COURT HAS DISCRETIONARY JURISDICTION AS §440.13(14)(c) FLA. STAT. (1994) HAS BEEN DECLARED VALID BUT NO OTHER JUSTIFICATION FOR JURISDICTION EXISTS.

The Florida Supreme Court has discretionary jurisdiction to review decisions of district courts of appeal that declare a statute valid. It also has jurisdiction when a district court opinion "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Art. V, §3(b)(3), Fla. Const., *see also* Fla. R. App. P. 9.030(a)(2)(A)(i and iv).

a. This Court has discretionary jurisdiction on one issue.

Respondent concedes this Court has discretion to review this case based on the declaration that §440.13(14)(c) Fla. Stat. (1994) is a valid statute. But does not concede any other justification for review of this case.

b. Claimant does not have standing to challenge PPD benefits which were supplanted by §440.015(3) Fla. Stat. (2003).

PPD benefits are also known as "supplemental benefits" or "wage loss benefits." Prior to the 2003 revision, an injured worker was eligible for PPD benefits only if he had a permanent impairment rating (hereafter "PIR") of at least Twenty Percent (20%). §440.15(3)(b) Fla. Stat. (2002). The record reflects that Petitioner had a six percent (6%) PIR. Accordingly, Petitioner cannot prove that

he would be entitled to the PPD benefits he seeks but for the 2003 revisions to section 440.15(3)(2003).

The 3rd DCA initially heard this case and affirmed a Circuit Court order finding that this very Petitioner lacked standing to bring a constitutional challenge to §440.15(3) because he could not prove that he met the 20% threshold to be entitled to PPD benefits. *Stahl* at 540. *see also Izquierdo v. Volkswagen Interamerica,* 450 So.2d 602, 603 (Fla. 1st DCA 1984) (finding that appellant had no standing to challenge the constitutionality of section 440.15(3)(b), Fla. Stat. (1979) because the order contained no finding that claimant would be entitled to wage-loss benefits but for the provisions of section 440.13(3)(b).); *Acosta v. Kraco, Inc.*, 426 So.2d 1120, 1121 (Fla. 1st DCA 1983) (holding "the claimant has no standing to raise the constitutionality of the statute since he failed to prove that but for the statute he would be eligible for wage loss benefits."); *Jack Eckerd Corp. v. Coker*, 411 So.2d 1026, 1028 (Fla. 1st DCA 1982) (holding that because claimant did not show that but for a statutory bar she had a right to benefits she lacked standing to present the constitutionality issue).

The only evidence in the record on appeal is that claimant has a 6% permanent impairment rating and therefore does not meet the 20% permanent impairment rating threshold that would entitle him to PPD benefits under §440.15(3). Therefore, this challenge should be dismissed for lack of standing.

c. The 1st DCA decision does not expressly and directly conflict with any opinion of this Court or any other district court.

In this case, the JCC entered an order which Stahl agreed to. The order denied PPD benefits, Permanent Total Disability Benefits, a Psychiatric Evaluation and Treatment, Penalties, Interest, Attorney Fees and Costs. Petitioner appealed to the 1st DCA. In his Appellate Brief Stahl raised a new issue of constitutionality based on the addition of a $10 co-pay funded by injured workers who had reached MMI under §440.13(14)(c) Fla. Stat. The 1st DCA entered an order which per curium affirmed the JCC's decision. Claimant filed a motion for rehearing and clarification. The 1st DCA granted the motion and entered the order petitioner seeks to have reviewed. Petitioner alleges that this order conflicts with *Martinez v. Scanlon,* 582 So.2d 1167 (Fla. 1991).

The 1st DCA order addressed two of claimant's multitude of complaints; the addition of the $10 co-pay to the statute and the elimination of PPD benefits. That court found that under the rational basis review the co-pay provisions furthers a legitimate stated purpose of ensuring reasonable medical costs after the injured worker reaches MMI. This is consistent with the stated purpose to the statute to provide benefits to injured workers at "a reasonable cost to the employer." §440.015 Fla. Stat. (2003). That court went on to say that PPD benefits were supplanted by Impairment Income Benefits (hereafter "Impairment Benefits").

There is no mention of the *Scanlon* case in this opinion. In addition, this was a workers' compensation case decided by the JCC under Chapter 440 of the Florida Statutes.

The *Scanlon* case was an appeal of a Second District Court of Appeals (hereafter "2nd DCA") opinion. In that case the 2nd DCA approved a declaratory judgement entered by a Circuit Court finding the 1990 revisions of the Florida Workers' Compensation act were unconstitutional based on the single subject requirement of the law. *Scanlon* at 1174. The Scanlon case did not involve PPD benefits, PPD benefits were not supplanted by the revisions of the Impairment Income Benefit statute until 2003. It also did not address the co-pay requirement under §440.13(14)(c) which was not added until 1994.

To invoke this Court's "conflict jurisdiction" a conflict between a decision from this Court or another district court must be express and direct. The conflict also must appear within the four corners of the majority decision. There can be no implied conflict to trigger this Court's jurisdiction. *Department of Health & Rehabilitative Services v. National Adoption Counseling Service, Inc.* 498 So.2d 888, 889. (Fla. 1986). Since *Scanlon* did not address PPD benefits or co-pay provisions, it does not expressly or directly conflict with this case.

This court should exercise discretionary jurisdiction only to settle issues of public importance and to preserve uniformity of principle and practice. *Jenkins v.*

State 385 So.2d 1356, 1357 - 1358, (Fla. 1980). Decisions of the district courts should not be reviewed unless the case is of importance to the public, as distinguished from that of the parties, and "in cases where there is a **real and embarrassing conflict of opinion** and authority between decisions." *Hastings v. Osius*, 104 So.2d 21, 22 (Fla. 1958) (emphasis added). This is not a case of public importance nor has Petitioner alleged that as a basis for jurisdiction. This case also does not raise a "real and embarrassing conflict of opinion." In fact, there is no conflict at all. Finally, an implied conflict such as is attempted here is not a basis for this court to accept jurisdiction. *Department of Health* at 889. As such, this Court cannot accept jurisdiction of this case based on a conflict.

POINT TWO: THIS COURTS DISCRETIONARY JURISDICTION SHOULD NOT BE EXERCISED BECAUSE BOTH STATUTORY REVISIONS PASS THE RATIONAL BASIS TEST AND CLAIMANT LACKS STANDING TO CHALLENGE §440.15(3) FLA. STAT.

"To satisfy the rational basis test, a statute must bear a rational and reasonable relationship to a legitimate state objective." *McCall v. United States of America*, 134 So.3d 894, 901. (Fla. 2014).

a. Supplemental benefits were supplanted by impairment income benefits and therefore pass the rational basis test.

There was no misapplication of the law in this case. Petitioner alleges that the elimination of PPD benefits in 2003 make the statute unconstitutional as it is no

longer a viable alternative to tort action. As the 1st DCA stated, PPD benefits were supplanted by a new scheme of impairment income benefits. Prior to 10/1/2003 an injured worker could receive PPD benefits two forms. First, he could receive Impairment Benefits of 3 weeks per percentage point of his Permanent Impairment Rating at 50% of his Temporary Total Disability (hereafter "TTD") rate. §440.13(3) Fla. Stat. (2002). Secondly, he could receive Supplemental Benefits but only if he had a 20% or greater permanent impairment rating (hereafter "PIR"). This scheme was abolished in favor of a new scheme of Impairment Income Benefits. Under the new scheme the injured worker would now receive 75% of his TTD rate on a scale which pays from 1 to 6 weeks per percentage point of PIR. Thus, an injured worker could actually receive higher Impairment Benefits under the new scheme. §440.13(3) Fla. Stat. (2003). As the 1st DCA further stated "Physical Impairment is one accepted criterion for measuring benefits, and it was within the legislature's discretion to utilize this standard." *Citing Bradley v. Hurricant Rest.*, 670 So.2d 162, 165 (Fla. 1st DCA 1996).

b. The 1994 addition of a $10 copay found at §440.13(14)(c) Fla. Stat. passes the rational basis test.

As stated by the 1st DCA, the copay provision does further the legitimate stated purpose of ensuring reasonable medical costs after an injured worker reaches

maximum medical improvement. This furthers the legislative intent of the statute found in §440.015 Fla. Stat. to provide benefits to injured workers "at a reasonable cost to the employer." The addition of this minimal copay is a deterrent to unnecessary medical treatment at the expense of the employer. As the *Scanlon* court noted, though the effect of this revision may have reduced benefits to eligible workers, the workers compensation law still remains a reasonable alternative to tort litigation. *Martinez* at 1171. The $10 copay cannot be said to be unreasonable alternative to a legitimate and stated purpose of the statute. This is particularly true since the revision has been in effect for over 20 years without any apparent unreasonable negative impact on injured workers and certainly no alleged impact on Petitioner.

POINT THREE: AS A MATTER OF PUBLIC POLICY THIS CASE SHOULD NOT BE REVIEWED BECAUSE IT IS NOT A MATTER OF PUBLIC IMPORTANCE NOR DOES IT REPRESENT A CONFLICT WITH ANY DECISION OF THIS COURT OR ANY DISTRICT COURT.

As this Court previously stated:

> "It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court which functions as a supervisory body in the judicial system for the state..."

The Court went on to say that under the constitutional plan the district court opinions are final and absolute in most cases and that this court should exercise

discretionary jurisdiction only to settle issues of public importance and to preserve uniformity of principle and practice. *Jenkins* at 1357 - 1358.

This Court recognized the importance of the district court opinions being final and absolute and said:

> "to fail to recognize that these are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy." *Id.* at 1358.

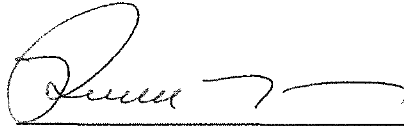
In other words, the decisions of the district courts should not be reviewed unless the case is of importance to the public, as distinguished from that of the parties, and "in cases where there is a **real and embarrassing conflict of opinion** and authority between decisions." *Hastings* at 22.

CONCLUSION

The only means of discretionary jurisdiction found in this case is the declaration of §440.13(14)(c) Fla. Stat. as a valid statute. It is not a matter of great public importance and does not conflict with any other cases from this court or any district court. Therefore, Petitioner's appeal should be dismissed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Answer Brief has been electronically filed with the First District Court of Appeal, and a true and correct copy has been sent, via electronic mail to: Mark L. Zientz, Esquire, mark.zientz@mzlaw.com; marlene@mzlaw.com, and Vanessa Lipsky, vlipsky@eglawmia.com; hbarnes@eglawmia.com; this 11th day of May, 2015.



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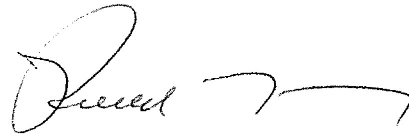
I HEREBY CERTIFY that this brief was typed in 14 point font Times New Roman on this 11th day of May, 2015.



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