

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

GRAYMOND BUTLER,

Appellant,

v.

CITY OF JACKSONVILLE,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D06-5918

Opinion filed January 31, 2008.

An appeal from an order of the Judge of Compensation Claims.
William H. Dane, Judge.

James H. Daniel and John J. Schickel of Coker, Schickel, Sorenson & Daniel, P.A.,
Jacksonville, for Appellant.

Richard Mullaney, General Counsel, and Michael J. Arington, Jacksonville, for
Appellee.

ROBERTS, J.

The claimant, Graymond Butler, appeals an order of the judge of compensation claims (JCC) denying his claim for permanent total disability (PTD) benefits resulting from his compensable accident of March 12, 1996. The claimant argues that he was

entitled to the presumption that his peripheral vascular disease (PVD) was caused by his occupation as a firefighter. The claimant also argues that he was entitled to PTD benefits because his PVD met or equaled a listed impairment. We agree and reverse.

Presumption

Section 112.18(1), Florida Statutes (1996), also referred to as the "Heart/Lung Bill," provides in pertinent part:

Any condition or impairment of health of any Florida municipal . . . firefighter caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence.

The statute applies to workers' compensation cases and provides for a presumption of compensability. See S. Trail Fire Control Dist. v. Johnson, 449 So. 2d 947, 947 (Fla. 1st DCA 1984); Martin v. State, Dep't of Corr., 890 So. 2d 1238, 1238 (Fla. 1st DCA 2005); see also § 440.09(1), Fla. Stat. (2001) (prescribing that an employer must pay compensation or furnish benefits if an employee suffers an accidental injury or death arising out of work performed in the course and the scope of employment).

In Caldwell v. Division of Retirement, 372 So. 2d 438, 440-41 (Fla. 1979), the Florida Supreme Court explained that the presumption

embodies the social policy of the state which recognizes that firemen are subjected during their career to the hazards of smoke, heat, and nauseous [sic] fumes from all kinds of toxic chemicals as well as extreme anxiety

derived from the necessity of being constantly faced with the possibility of extreme danger. The legislature recognized that this exposure could cause a fireman to become the victim of tuberculosis, hypertension, or heart disease.

Thus, based upon a claimant's occupation as a firefighter, the presumption relieves the claimant from the necessity of proving an occupational causation of the disease resulting in disability or death. Id. at 441. The presumption switches the burden of proof from the claimant to the employer and may be overcome by clear and convincing evidence that the disease was caused by a specific non-work-related event or exposure. Id.

In the instant case, the JCC neither applied the presumption nor made any findings that the employer rebutted the presumption. This was error. Both the claimant and the employer presented evidence that the claimant's PVD was caused by his atherosclerosis which was, in turn, caused by his hypertension. The employer concedes that the claimant was entitled to the presumption as to his hypertension. The employer did not present any evidence, let alone clear and convincing evidence, that the claimant's PVD was caused by a specific non-work-related event or exposure. Thus, the claimant was entitled to the presumption that his PVD was caused by his occupation as a firefighter.

PTD Benefits

A claimant is entitled to PTD benefits only if he can show that he has suffered a catastrophic injury. See § 440.15(1)(b), Fla. Stat. (1996). A catastrophic injury is defined, *inter alia*, as any injury that would otherwise qualify a claimant to receive Social Security disability income benefits under the federal Social Security Act as the Act existed on July 1, 1992. See § 440.02(34)(f), Fla. Stat. (1996). The claimant bears the burden of proving that he would otherwise qualify for Social Security disability income benefits by being disabled within the meaning of the Act. See 9 Fla. Prac., Workers' Comp. With Forms § 20:4 (2007 ed.). To prove such disability, a five-step sequential inquiry is made. See 20 C.F.R. § 404.1520(a)-(f) (1992); 9 Fla. Prac., Workers' Comp. With Forms § 20:4 (2007 ed.).

The first step of the inquiry asks whether the claimant is performing substantial gainful employment. See 20 C.F.R. § 404.1520(b) (1992). If the claimant is performing substantial gainful employment, the inquiry stops there and the claimant is not found to be disabled. See id. If, however, the claimant is not performing substantial gainful employment, the JCC continues on to the second step. See id.

The second step asks whether the claimant has a severe impairment which significantly limits his physical or mental ability to do basic work activities. See 20 C.F.R. § 404.1520(c) (1992). If the claimant does not have severe impairment, the inquiry stops there and the claimant is not found to be disabled. If, however, the

claimant does have a severe impairment, the JCC continues on to the third step. See id.

The third step asks whether the claimant has a severe impairment that meets or equals a listed impairment in 20 C.F.R., Part 404, Subpart P, Appendix 1. See 20 C.F.R. § 404.1520(d) (1992). If the claimant does not have a severe impairment that meets or equals a listed impairment, the inquiry stops there and the claimant is not found to be disabled. See id. If, however, the claimant does have a severe impairment that meets or equals one of the listings, the claimant qualifies as disabled without any further inquiry. See id. If the claimant satisfies the third step, he must be found to be disabled regardless of the outcome of the fourth and fifth steps. See 20 C.F.R. § 404.1520(d) (1992).

The fourth step asks whether the claimant can perform past relevant work. See 20 C.F.R. § 404.1520(e) (1992). If the claimant can perform past relevant work, the inquiry stops there and the claimant is not found to be disabled. See id. If, however, the claimant cannot perform past relevant work, the JCC continues on to the fifth step. See id.

The fifth step asks whether, based on the claimant's age, education, and work experience, the claimant can perform other similar work found in significant numbers in the national economy. See 20 C.F.R. § 404.1520(f) (1992); 20 C.F.R. §

404.1560(c) (1992). If, however, the claimant is able to perform other similar work, the claimant will not be found to be disabled and the JCC's evaluation would be complete. See id. Thus, the claimant would not be entitled to PTD benefits. If, however, the claimant is not able to perform other similar work, the claimant is found to be disabled. See id.

In the instant case, the JCC denied the claim for PTD benefits despite having found that the claimant's PVD met a listed impairment under the third step of the inquiry. Although not acknowledged by the JCC in his final order, by finding that the claimant met a listed impairment, the JCC found the claimant disabled under the third step and the inquiry should have stopped there. The JCC, however, went on to the fourth and fifth steps and found that the claimant was not disabled under the fifth step. This was error. It appears from the final order that the JCC did so because he concluded that the claimant's PVD did not result from the claimant's occupation as a firefighter. As discussed previously, the claimant was entitled to the presumption that his PVD was caused by his occupation as a firefighter. Therefore, the JCC erred in denying the claim for PTD benefits.

REVERSED and REMANDED with directions to the JCC to award the claimant PTD benefits.

BROWNING, C.J., and KAHN, J., CONCUR.