

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

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

W. G. ROE & SONS,

Appellant,

v.

CASE NO. 1D07-3598

JAVIER RAZO-GUEVARA,

Appellee.

_____ /

Opinion filed December 31, 2008.

An appeal from an order of the Judge of Compensation Claims.
Mark H. Hofstad, Judge.

Date of Accident: March 23, 2004.

Harold E. Barker and Pat Dicesare of Dicesare Davidson & Barker, Lakeland, for
Appellant.

Bradley Guy Smith of Smith, Feddeler, Smith & Miles, P.A., Lakeland; Susan W.
Fox of Fox & Loquasto, Tampa; Wendy S. Loquasto of Fox & Loquasto,
Tallahassee, for Appellee.

PER CURIAM.

In this workers' compensation appeal, the Employer/Carrier (E/C) appeal,
and Claimant cross-appeals, an order granting some requests for indemnity benefits
and denying others. We affirm the order in all respects except to the extent the

Judge of Compensation Claims (JCC) limited his award of temporary total disability benefits to six months.

The JCC limited the award to six months by applying section 440.093(3), Florida Statutes (2004). This statute provides that, “[s]ubject to the payment of permanent benefits under s. 440.15, in no event shall temporary benefits for a compensable mental or nervous injury be paid for more than 6 months after the date of [physical MMI]” The scope of section 440.093(3), Florida Statutes, is an issue of first impression.

In construing a statute, courts must look to its plain language. See Fla. Dep’t of Educ. v. Cooper, 858 So.2d 394, 396 (Fla. 1st DCA 2003). “Subject [to]” is defined as “dependent on some act or condition.” THE MERRIAM-WEBSTER DICTIONARY 712 (New ed., 2004). Thus, the six-month limitation on temporary psychiatric benefits is conditioned upon the payment of permanent benefits for the associated physical injury. This means the limitation does not apply unless permanent benefits are being paid. Because Claimant is not being paid permanent benefits, this statute does not apply here. Therefore, the JCC erred in applying it to limit Claimant’s TTD benefits.

AFFIRMED in part, REVERSED in part, and REMANDED for proceedings consistent with this opinion.

LEWIS and THOMAS, JJ., and LAWRENCE, JR., L. ARTHUR, SENIOR JUDGE, CONCUR.