

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

EDWIN VAZQUEZ,

Petitioner,

v.

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

CASE NO. 1D15-0623

CARLOS ROMERO, L & R
STRUCTURAL CORPORATION,
ACOSTA
CONSTRUCTION/CO/ASSOCIAT
ED INDUSTRIES INSURANCE
COMPANY, GUARANTEE
INSURANCE COMPANY, and
STAR INSURANCE.,

Respondents.

Opinion filed August 19, 2015.

Petition for Writ of Prohibition.

Matias R. Dorta, Gonzalo Ramon Dorta, and Craig A. Applebaum of Dorta Law,
Coral Gables, for Petitioner.

Rayford H. Taylor of Casey Gilson, P.C., Atlanta, GA., and William T. Goran,
Miami, for Respondents Romero and Associated Industries Insurance; and
Stephanie R. Hayes, Staff Counsel, Office of the Judges of Compensation Claims,
Tallahassee.

KELSEY, J.

Petitioner seeks a writ of prohibition to prevent the Judge of Compensation

Claims (JCC) from exercising jurisdiction over discovery requests that Respondent Romero filed after Petitioner had voluntarily dismissed petitions for benefits (PFBs) against Romero and two other alleged Employers and their Carriers. After considering all of the parties' arguments and those of the Office of the Judges of Compensation Claims (OJCC), we grant the petition for the following reasons.

Petitioner voluntarily dismissed his initial PFBs without prejudice, and instead sued all three alleged employers in circuit court. Despite the dismissal of the PFBs and the pendency of the civil lawsuit, Romero and his carrier filed with the JCC papers seeking discovery of Petitioner's medical records from a non-party hospital, and other discovery related to a claim seeking contribution from another alleged employer. Petitioner objected. The JCC held a hearing on Petitioner's objection, and entered an order holding that the JCC has jurisdiction over Romero's discovery efforts within the workers' compensation arena. Further proceedings before the JCC were stayed upon this Court's issuance of a show cause order on the Petition. See Fla. R. App. P. 9.100(h).

Romero and the OJCC argue that the JCC retains jurisdiction, either because Petitioner's voluntary dismissal was without prejudice and a PFB could be refiled, or pursuant to section 440.42(4), Florida Statutes (2013). We reject all of the Respondents' arguments. Dismissal of a PFB divests a JCC of jurisdiction. "When all claims asserted through a petition for benefits are dismissed, the JCC loses jurisdiction to address those claims. 'Such dismissal divests a JCC of jurisdiction to

take any further action in the case.” Cova v. Ostfeld, 994 So. 2d 1162, 1162 (Fla. 1st DCA 2008) (quoting Perez v. Winn-Dixie, 639 So. 2d 109, 111 (Fla. 1st DCA 1994)).

Section 440.42(4) does not confer jurisdiction on the JCC, because that statute applies only to disputes over carriers’ relative coverage responsibilities after underlying liability has been established. See, e.g., Medpartners/Diagnostic Clinic Med. Group, P.A. v. Zenith Ins. Co., 23 So. 3d 202, 204 (Fla. 1st DCA 2009) (“[A] carrier can obtain contribution pursuant to section 440.42(4) only if the carrier from which contribution is sought is liable to the claimant for payment of benefits.”); Jeffrey’s Steel v. Conibear Equip., Inc., 854 So. 2d 268, 271 (Fla. 1st DCA 2003) (“[S]ection 440.42(3) [now renumbered as (4)] can be applied only when each of the contending employer/carriers is liable to the claimant for a portion of the benefits which have been determined under other provisions of chapter 440.”).

In the present posture of the underlying dispute, the JCC lacks jurisdiction.

PETITION GRANTED.

THOMAS and MARSTILLER, JJ., concur.