

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-1330

ISMAEL TIBURCIO,

Appellant,

v.

HILLSBOROUGH COUNTY
SHERIFF'S OFFICE/COMMERCIAL
RISK MANAGEMENT, INC.,

Appellees.

On appeal from the Judges of Compensation Claims.
Mark A. Massey, Judge.

Date of Accident: February 14, 2019.

August 17, 2022

RAY, J.

Deputy Ismael Tiburcio appeals a final order of the Judge of Compensation Claims (JCC) denying compensability of his workers' compensation claim for heart disease brought under section 112.18(1)(a), Florida Statutes (2020) (known as the "Heart-Lung Statute"). Although the JCC found that Tiburcio qualified for the statutory presumption that his heart disease was accidental and suffered in the line of duty, the JCC denied benefits after finding that Tiburcio departed in a material fashion from his prescribed course of treatment, giving rise to the application of the

so-called “reverse presumption” under section 112.18(1)(b)1.a., Florida Statutes. For this provision to apply, Tiburcio must have materially departed from the prescribed course of treatment for the same condition for which he seeks compensability. Since that is not the case here, we reverse.

I.

Tiburcio was employed by the Hillsborough County Sheriff’s Office as a deputy sheriff. He was hired in corrections in 2004, and he transferred to patrol in 2005. He had pre-employment physicals in January and December 2004, neither of which showed any evidence of hypertension or heart disease.¹

During a busy overnight shift in February 2019, he began to experience shortness of breath and pain in his chest and left side. He was admitted to the hospital for a heart attack and underwent an arterial stent implant procedure.

Tiburcio sought compensability of his heart disease under the Heart-Lung Statute. His employer and its insurance carrier (collectively, “E/C”) at first accepted the claim under the “pay and investigate” provision of section 440.20(4), Florida Statutes (2020), but ultimately denied compensability. Relevant to this appeal, the E/C relied on the Heart-Lung Statute’s reverse presumption provision based on Tiburcio’s departure from his personal physician’s prescribed course of treatment for related health conditions, which they argued had significantly aggravated his heart disease.

The JCC found that since 2011, Tiburcio had been treated by his personal physician, Dr. George Cheeseman, for a variety of health conditions that included hypertension, high cholesterol, hyperlipidemia, diabetes, obesity, and sleep apnea. Dr. Cheeseman’s records documented Tiburcio’s repeated noncompliance with treatment plans designed to address these conditions, as well as Dr. Cheeseman’s caution that Tiburcio risked

¹ Although Tiburcio originally sought compensability of both heart disease and hypertension, by the time of the final hearing, he pursued a claim for heart disease only.

suffering complications such as a stroke, kidney failure, heart attack, and even death. Dr. Cheeseman's records did not, however, include a diagnosis of heart disease in general, or coronary artery disease in particular.

Tiburcio also saw cardiologist Dr. Rolando Rodriguez in May 2011, who diagnosed Tiburcio with a positive family history of early cardiac disease. Still, Dr. Rodriguez noted that Tiburcio did not have any obstructive disease himself and that his chest pain "could certainly be GI related." But Dr. Rodriguez also noted that Tiburcio "has some early atherosclerotic disease and should be aggressive in controlling risk factors." He was then advised to stop smoking and lose weight. As with Dr. Cheeseman's records, there was no diagnosis specific to heart disease or coronary artery disease.

The parties each retained an independent medical examiner. Both cardiologists agreed that by the time of his heart attack, Tiburcio had coronary artery disease and had risk factors for the development of heart disease prior to the heart attack. One examiner concluded that the risk factors caused the coronary artery disease that led to Tiburcio's heart attack, and the other testified that there was no way of telling what caused the coronary artery disease.

After considering the evidence, the JCC determined that Tiburcio's "prescribed course of treatment was specifically designed to prevent or arrest the development of heart disease, as documented in Dr. Cheeseman's records." He further found that Tiburcio had "departed in a material fashion" from that course of treatment which led to "a significant aggravation of his heart disease resulting in disability or increasing his disability and need for treatment."

Based on these findings, the JCC concluded that the E/C met their burden of proving that the reverse presumption applied, and that Tiburcio thus forfeited the presumption that his heart disease was accidental and suffered in the line of duty. This appeal followed.

II.

Because the question before us involves an issue of statutory interpretation, our review is de novo. In determining the meaning of a statute, if the language of the statute is “clear, unambiguous, and addresses the matter [at] issue,’ then our task is at an end.” *Advisory Op. to Governor re: Implementation of Amend. 4, the Voting Restoration Amend.*, 288 So. 3d 1070, 1078 (Fla. 2020) (quoting *Graham v. Haridopolos*, 108 So. 3d 597, 603 (Fla. 2013)). Under this supremacy-of-text approach, “[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Id.* (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). “Context is a primary determinant of meaning,” and the “entirety” of the law at issue “provides the context for each of its parts.” Scalia & Garner, *Reading Law* at 167.

Relevant here, the Heart-Lung Statute does two things. First, it creates a rebuttable presumption for law enforcement officers satisfying the statute’s prerequisites that their heart disease is accidental and suffered in the line of duty. § 112.18(1)(a), Fla. Stat.

Second, it gives an employer/carrier the opportunity to prove that a law enforcement officer has forfeited the presumption established in (1)(a), by showing that the officer has materially departed from a prescribed course of treatment set by his personal physician, thereby creating in the employer/carrier’s favor a presumption that the claimed condition is not incurred in the line of duty. § 112.18(1)(b)1., Fla. Stat. That provision states in relevant part:

For any workers’ compensation claim filed under this section and chapter 440 occurring on or after July 1, 2010, a law enforcement officer . . . suffering from . . . heart disease . . . is presumed not to have incurred such disease in the line of duty . . . if the law enforcement officer . . . :

Departed in a material fashion from the prescribed course of treatment of his or her personal physician and the departure is demonstrated to have resulted in a

significant aggravation of the . . . heart disease. . .
resulting in disability or increasing the disability or need
for medical treatment[.]

Id. at (1)(b)1.–(1)(b)1.a., Fla. Stat.

The phrase “prescribed course of treatment” is given a specific meaning within the statute:

As used in this paragraph, “prescribed course of treatment” means prescribed medical courses of action and prescribed medicines for the specific disease or diseases claimed and as documented in the prescribing physician’s medical records.

Id. at (1)(b)2., Fla. Stat.

III.

To begin, there is no dispute that Tiburcio satisfied the statutory prerequisites for the presumption that his heart disease was accidental and suffered in the line of duty under subsection (1)(a) of the Heart-Lung Statute and that the E/C did not present sufficient evidence to rebut it. Thus, the sole issue is whether the JCC erred in applying subsection (1)(b)1.a.’s reverse presumption provision in denying compensability of Tiburcio’s claim.

Tiburcio contends that the reverse presumption applies only when there is a departure from a prescribed course of treatment for the *specific* disease or diseases for which a claimant is seeking compensability. And because he claimed compensability for heart disease, and his alleged noncompliance was for conditions other than heart disease, it was error for the JCC to apply the reverse presumption provision. We agree.

In the Heart-Lung Statute, the Legislature unambiguously limited the applicability of the reverse presumption provision by defining “prescribed course of treatment” to mean “prescribed medical courses of action and prescribed medicines for the *specific disease or diseases claimed.*” § 112.18(1)(b)2., Fla. Stat. (emphasis added). Additionally, the employer/carrier can only benefit from

the reverse presumption if they can show that the claimant's departure from the prescribed course of treatment resulted in a "significant aggravation" of the condition causing disability, an increase in disability, or an increase in the need for medical treatment. § 112.18(1)(b)1., Fla. Stat. This aggravation requirement presupposes that the claimed condition was previously diagnosed.

Reading subsection (1)(b) as a whole, the E/C needed to show that (1) Tiburcio was diagnosed with heart disease before the alleged date of accident, (2) he materially departed from the prescribed treatment for the heart disease, and (3) such departure significantly aggravated the heart disease causing disability, an increase in disability, or an increase in the need for medical treatment.

It was not enough, then, for the E/C to rely on Tiburcio's failure to follow a course of treatment and medications prescribed for his hypertension, high cholesterol, obesity, and other conditions that may have been risk factors for, but were not in fact, the claimed condition of heart disease.

IV.

In sum, because the E/C failed to satisfy their burden of proof under section 112.18(1)(b)1.a., which would have resulted in a presumption in their favor that Tiburcio's heart disease was not incurred in the line of duty, we reverse the order denying compensability and remand for entry of an order consistent with this opinion.²

REVERSED.

WINOKUR and JAY, JJ., concur.

² Based on this disposition, we need not reach Tiburcio's second issue on appeal.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Tonya A. Oliver, Tampa, and Amie E. DeGuzman, Jacksonville, for Appellant.

Warren K. Sponsler and Lauren Maggert, Tampa, for Appellees.