

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D21-2013

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STEPHEN SARGENT,

Appellant,

v.

BRADFORD COUNTY SHERIFF'S  
OFFICE/FLORIDA LEAGUE OF  
CITIES,

Appellees.

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On appeal from an order of the Office of the Judges of  
Compensation Claims.  
William R. Holley, Judge.

Date of Accident: January 11, 2020.

June 1, 2022

PER CURIAM.

AFFIRMED.

BILBREY and KELSEY, JJ., concur; MAKAR, J., dissents with  
opinion.

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

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MAKAR, J., dissenting.

When Stephen Sargent applied for employment with the Bradford County Sheriff's Office (BCSO), he was required to take a pre-employment physical examination, which he completed a few months later on May 31, 2012; he passed the examination, which showed no evidence of hypertension or heart disease. Later that year, he was hired as a part-time correctional officer. He worked in that capacity until May 2013 when he began working 80+ hours every two weeks (i.e., at least full-time), resulting in his employment status changing to a full-time correctional officer in April 2014, which was described as simply "clicking a box" in an online program.

Unlike when he was first hired, BCSO did not require Sargent to undergo a physical examination when he became a full-time correctional officer. That's because its policy does not require a new physical examination for employees advancing from part-time to full-time employment ("The practice or policy of [BCSO] was not to administer a new physical examination when employees were promoted from part time to full time."). BCSO's in-house physician since 2010 testified that part-time employees are not retested and, instead, work under only the initial physical examination. About half of BCSO's correctional officers come in as part-time correctional officers and end up becoming full-time correctional officers, resulting in them working lengthy periods (e.g., 15 years) under the same physical examinations they initially took to become part-time correctional officers due to the policy.

Six years later, in January 2020, Sargent had a cardiac event and filed a workers' compensation claim. BCSO initially accepted compensability under Florida's "pay-and-investigate" law, *see* § 440.20(4), Fla. Stat. (2022), but later denied the claim. Sargent countered that he was entitled to the benefit of the so-called

“Heart-Lung” statute, which creates a presumption in favor of firefighters, police officers, correctional officers and others, that any “condition or impairment” that is “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.” § 112.18(1)(a), Fla. Stat. (2022).

For a correctional officer, a condition precedent to the rebuttable statutory presumption is that the correctional officer “must have successfully passed the physical examination required by this subsection *upon entering into service* as a . . . correctional officer . . . with the employing agency, which examination must have failed to reveal any evidence of tuberculosis, heart disease, or hypertension.” § 943.13(6), Fla. Stat. (2022) (emphasis added).<sup>1</sup>

The JCC held that Sargent could not rely upon his initial pre-employment physical examination in May 2012—the only one BCSO ever required—because it was performed when he applied for a part-time correctional officer position rather than a full-time correctional officer position. The JCC’s conclusion was based on the definition of “correctional officer,” which—for purposes of sections 943.085–943.255, Florida Statutes—is defined in relevant part as “any person who is appointed or employed *full time* by the state or any political subdivision thereof . . . and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution[,]” but not including “any secretarial, clerical, or professionally trained personnel.” *Id.* § 943.10(2) (emphasis added). For like purposes, a “part-time correctional officer” is defined similarly but is limited to those who “employed or appointed less than full time” by their respective agencies. *Id.* § 943.10(7).

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<sup>1</sup> This condition is similar to that for firefighters and law enforcement officers, who “must have successfully passed a physical examination *upon entering into any **such** service* as a firefighter or law enforcement officer[.]” § 112.18(1)(a), Fla. Stat. (2022) (emphases added).

The JCC reasoned that because Sargent did not undertake a physical examination “upon entering into service as a [full-time] correctional officer” in April 2014, he was ineligible for the statutory presumption. Stated differently, the JCC concluded that the “date that the Claimant officially became a full-time correctional officer (and not when he first started part-time) is when the timeframe of the physical examination must be measured from.” Because Sargent’s initial pre-employment physical examination in May 2012 was almost two years *prior* to his official promotion to full-time status in April 2014, he was not entitled to the statutory presumption.

Overlooked, however, is that the employer, BCSO, failed to require and affirmatively disavowed the need for a renewed physical examination for Sargent or any part-time correctional officer who is promoted to full-time employment. BCSO’s policy affirmatively prevents the physical examination required by statute, *see* § 943.13(6), Fla. Stat. (requiring passing a physical examination), and thereby amounts to a relinquishment of BCSO’s ability to contest the statutory presumption that would otherwise arise. As BCSO explained, “[w]e didn’t do a second physical [of existing employees] because they’d been there with us, they’d been observed, they passed their first drug test. We knew they were widely capable from their - our previous experience with them. We didn’t retest.” In essence, BCSO affirmatively disavowed new testing for part-time employees in Sargent’s position. In doing so, it was exercising its right, as an employer, to accept the employee’s medical status and not require an updated examination; but it also thereby acquiesced and relinquished its right to contest Sargent’s entitlement to the statutory presumption. Nothing in the statutory framework precludes an employer from relying upon its own *prior* physical examination of an existing employee to meet employment standards; and nothing requires an employer to conduct a new physical examination as a precondition to a full-time position when it has a previous satisfactory physical examination on file.

The JCC relied on *City of Homestead v. Foust*, 242 So. 3d 1169 (Fla. 1st DCA 2018), for the conclusion that no waiver or acquiescence occurred in this case, but *Foust* had very different facts, making it inapplicable. First of all, unlike this case, the employer/carrier in *Foust* “could not have voluntarily and

intentionally relinquished” a claimed right to object to the statutory presumption; that’s because “at the time of the hire (in the early 1980s) . . . neither the physical-examination requirement, nor the presumption itself, applied to [law enforcement officers.]” *Id.* at 1171. Because the statutory framework did not apply, the employer/carrier “could not have waived that right.” *Id.* Unlike in *Foust*, the statutory presumption at issue here pre-existed Sargent’s employment by decades, making it directly applicable to Sargent’s acquiescence claim. Second, the court in *Foust* concluded that “no evidence *beyond speculation* supports the conclusion that the City ‘acquiesced’ in the use of the January 1983 physical as a pre-employment physical upon [Foust’s] hire as a full-time [law enforcement officer].” *Id.* (emphasis added). In sharp contrast, here the employer, BCSO, unequivocally accepted and thereby acquiesced in the initial pre-employment physical examinations of part-time employees, such as Sargent, by accepting their physical status and affirmatively foregoing retesting pursuant to BCSO’s own policy.

Notably, the statute at issue precludes the use of a prior physical examination only when a correctional officer goes from a previous employer to a different employer,<sup>2</sup> but it does not do so when a part-time correctional officer is promoted to a full-time correctional officer within the same agency, thereby implying that acceptance of prior physical examinations by a current employer is permissible. The statute only requires that a correctional officer “*must have successfully passed the physical examination required by this subsection upon entering into service,*” making prior physical examinations acceptable. Even if a physical examination must be administered within a reasonable time after entering into service as a full-time correctional officer, an employer can effectively waive or acquiesce in temporal and other limitations and rely on prior physical examinations; after all, it is the employer/carrier who decides whether to accede to or contest the statutory presumption. Thus, when an employer has a policy of not

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<sup>2</sup> See § 943.13(6), Fla. Stat. (2022) (“A law enforcement officer, correctional officer, or correctional probation officer may not use a physical examination from a former employing agency for purposes of claiming the presumption set forth in s. 112.18 against the current employing agency.”)

administering a new physical examination when a part-time correctional officer is promoted to a full-time correctional officer, the employer has effectively abdicated its ability to renounce the statutory presumption; an employer who precludes a physical examination can't thereby benefit from the lack of one. Plus, employers—particularly those employing law enforcement and correctional officers—are charged with knowing the law that they implement and thereby cannot reasonably claim ignorance by shifting the responsibility for administering statutorily required physical examinations to applicants and current employees.

In conclusion, BCSO's policy of not requiring testing of its part-time correctional officers when it promotes them to full-time correctional officers amounts to acquiescence in the existing pre-employment physical examinations as satisfying the requirements of section 943.13(6). Sargent is thereby entitled to the statutory presumption.

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James Robert Spears, Orlando, for Appellant.

R. Stephen Coonrod, Tallahassee, and Tracey J. Hyde, Panama City, for Appellees.