

## FLORIDA WORKERS' COMPENSATION NEWSLETTER

Here are summaries of the most recent decisions in Florida Workers' Compensation Law. Please contact us if we can be of any assistance in further interpreting these cases or applying them to your claims. We are available at the below contact points to discuss these or any other issues at your convenience. Remember, these opinions were just released and are not final until the time expires to file a motion for rehearing and that is ultimately ruled on. Feel free to contact us to determine when the opinions become final.

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### Opinions Filed February 5, 2010

In the case of Seminole County Government and Johns Eastern Company, Inc. v. Baumgardner the E/C paid the claimant at the rate of 50% of his average weekly wage (AWW) for impairment benefits rather than the rate of 75%. It was undisputed that during the time he received impairment benefits the claimant missed work and failed to earn 100% of his AWW. However, it was also undisputed that the missed work was unrelated to the compensable injury. The E/C argued that the diminished earnings must be related to the compensable injury to entitle the claimant to the 75% rate. The 1st DCA held that section 440.15(3)(c) does not require a causal connection between the missed work and the compensable injury to entitle the claimant to the 75% rate for impairment benefits. Therefore, during the time the claimant received impairment benefits, because he earned less than his AWW, even though this was due to factors other than the compensable injury, the E/C would still owe 75% of the AWW. The simple fact that the claimant was earning less than 100% of his AWW entitled him to the 75% rate without the need to establish that the lowered earning was related to the compensable injury.

Questions or comments?

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