

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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New Appellate Decisions

Very recently, the First District Court of Appeals gave us insight into when and when not to appeal a final merits order that awards benefits in a workers' compensation case. In *Florida Detroit Diesel v. Nathai*, 35 FLW 414, the First District employed a procedure that is rarely seen in appellate practice. The Court summarily affirmed an appeal of the JCC's order which awarded a second medical opinion as reasonably medically necessary. Judge Padovano, speaking for the unanimous panel, explained that the brief presented by the employer which challenged the JCC's award did not present a preliminary basis for reversal of the order.

Judge Padovano instructed that the reason the brief had no merit is that there was competent medical evidence to support the JCC's finding that a second opinion was medically necessary. Many times the party and indeed, the trial attorney during the "heat of battle" feel that the decision to be reviewed is wrong or that they have the better evidence or testimony. However, electing to bring that argument to the First District for reversal is ill advised as demonstrated by this ruling in which the claimant prevailed and did not even have to file a brief.

The appellate court showed that a simple "yes" to the question regarding whether the second opinion is medically necessary requires affirmance of the finding of medical necessity by the JCC -- and no argument from the claimant was required.

This decision also shows why it is unwise to attempt to win an appeal by the use of semantics. The court was not persuaded by the argument that there was no testimony that the second opinion was "orthopedically necessary", where there was testimony in the record that it was medically necessary.

Although it can be quite difficult at times, the decision to appeal must involve an unemotional and fair reading of the testimony coupled with an experienced assessment of the appellate court's response to a challenge of the lower court's order.

Questions or comments?

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