

**SAVE
THE
DATE**
2018

**UPCOMING
CEU SEMINARS**

October 30, 2018
11:30am - 2:00pm

**“Live Foot Surgery
with Joseph D.
Funk, D.P.M.”**

Presented by:
Eraclides, Gelman,
Hall, Indek, Goodman
Waters, P.A.

Location:
EVEN Hotel
Sarasota/LWR
(formerly Holiday Inn)
6231 Lake Osprey Dr.
Lakewood Ranch, FL
34240

November 12, 2018
11:30am - 2:00pm

**“SIU and Anti-Fraud
Training”**

Presented by:
Command
Investigations

Location:
EVEN Hotel
Sarasota/LWR

**For more details,
contact:**

Rose Rome at
rrome@
johnseastern.com



JOHNS EASTERN

Claim Adjusters & Third Party Administrators

JUSTIFIABLE REFUSAL OF EMPLOYMENT

**When are JCCs
justified in finding a
claimant’s refusals of
employment
“justifiable”?**

Typically an injured worker who refuses suitable employment is not entitled to receive compensation unless, in the opinion of the Judge of Compensation Claims (JCC), the employee’s refusal is “justifiable.”¹

Recently, in *EmployBridge v. Rodriguez*,² the Florida First District Court of Appeal (DCA) reversed a JCC’s award of temporary benefits that was predicated on his finding that the claimant’s refusal of suitable employment was justifiable. The JCC considered the following factors in awarding benefits: the claimant’s 17-mile commute, language and limitations, lack of a personal vehicle (the family vehicle was used mainly by her husband), lack of familiarity with public transportation, dependence on family members to drive her to and from work, and the pain she

experienced after sitting for long periods of time.

This was obviously a factual determination, so it is interesting the appellate court weighed in and reversed the JCC’s decision. Regardless, the “decision” (comprised of two concurrences and one dissent) provides insight as to what the appellate judges



consider a “justifiable” refusal of suitable employment within the confines of Chapter 440.

Chief Judge Thomas (concurring) indicated that a justifiable refusal requires some kind of evidence establishing a “plausible nexus” between a claimant’s injury, health, or safety, and the claimant’s refusal of suitable work. Judge Osterhaus (concurring) disagreed, stating that such

an analysis requires a broad inquiry and that non-injury related factors should also be considered. Examples he provided include jobs requiring a 200-mile commute, a single-parent claimant working 24-hour shifts, a claimant violating sincerely held religious/moral beliefs, or a claimant completing impossible tasks. Judge Bilbrey (dissenting) suggested that the majority should have deferred to the JCC’s factual findings.

Broussard, Cullen & Blastic, P.A. recently brought another case addressing “justifiable refusal” to the First DCA.³ In this scenario, the JCC found the claimant’s refusal “justifiable” when she felt she could not drive the 127-mile commute safely due to a medication she was taking, was required to make that commute five days per week instead of her pre-injury commute which she only made 10 times per month, and needed to take a break from driving every 45 minutes per her work-related sitting restrictions, which she claimed she could not safely do based on her driving route.

Continued on page 4

Page 2
Rx Drug Misuse and
the Workplace

Page 5
JE’s Stellar SIU
Performance in 2018

Page 6
NCCI Proposes WC
Rate Decrease in FL



STUDY: OPIOID CREATES WORKPLACE ISSUES

The prescribing of opioids, even conservatively, brings with it inherent risk. For some injured workers, prescription opioid use can be a slippery slope to dependence or even addiction. From a claims management perspective, these behaviors can extend the life of a claim (in some cases indefinitely) and delay or prohibit return to work, dramatically increasing both medical and indemnity costs. In fact, opioid use does not have to be long-term in order to delay recovery and extend the life of a workers' compensation claim. A claim is 30% less likely to close within 90 days if an opioid is prescribed in the first four weeks.¹

In a recent National Safety Council survey of 200 employers, four out of five reported observing some type of opioid-related issue in the workplace.² Employers play a role in helping to identify and address prescription opioid misuse. Workplace costs associated with the misuse of prescription opioids are upwards of \$25 billion per year.³ Individuals misusing prescription pain medications can pose an increased risk to themselves or other employees. They are also more likely to be tardy, absent, or impaired, resulting in reduced productivity.

Employers can play an active role in identifying employees who may benefit from addiction therapy through drug testing programs. Many employers who screen for illicit substances do not also screen for prescription opioids – in some cases because the additional testing represents a significant cost burden for them, or because the employer also believes it is not their place to monitor medications that employees have obtained legally from a physician. However, with the growing impact of opioid misuse in the workplace, the potential benefits of screening for prescription drugs may have to be reconsidered.

For employees who are recovering from addiction to prescription pain medications, Employee Assistance Programs (EAPs) can be an important part of staying on track with their sobriety. These programs can also decrease the need for inpatient addiction treatment

services, reducing correlated costs associated with these services. However, EAPs are not utilized as often as they can be. Employees may not be aware of the scope of services EAPs offer; in other instances, they may fear negative repercussions. Employers have a responsibility to make their workers aware of the benefits and confidentiality of these programs.

In some cases, employer education is also needed, as they are not necessarily aware of the prevalence of the problem or may not be equipped to manage it. The Substance Abuse and Mental Health Services Administration (SAMHSA) reports that 9% of the fulltime workforce are illicit drug users, including non-medical use of prescription drugs.⁴ This number doesn't even account for the portion of workers who are being prescribed pain medications for legitimate medical reasons, which still brings a degree of risk for dependence or misuse. Further education is needed on the direct and indirect risks posed by opioid misuse within the workplace, especially as they relate to the injured worker.

Johns Eastern, in partnership with Healthesystems, has been consistently working to educate and inform prescribers and patients of these concerns. In fact, opioid utilization has decreased consistently over the past three years, and by end of 2017, 66% of claims did not utilize any opioids!

Improving patient safety while reducing costs continues to set Johns Eastern apart from the competition.



¹ Busse JW, Ebrahim S, Heels-Ansdell D, et al. Association of worker characteristics and early reimbursement for physical therapy, chiropractic and opioid prescriptions with workers' compensation claim duration, for cases of acute low back pain: an observational cohort study. *BMJ Open*. 2015; 5:e007836. doi:10.1136/bmjopen-2015-007836.

² National Safety Council and the Indiana Attorney General Rx Drug Abuse Task Force. Results from a survey of Indiana employers. Available at http://www.nsc.org/NSC/Documents_Advocacy/FINAL%20Media%20briefing%20PPT.PDF

³ Birnbaum HG, White AG, Schiller M, et al. Societal costs of prescription opioid abuse, dependence, and misuse in the United States. *Pain Medicine*. 2011;12:657-67.

⁴ Substance Abuse and Mental Health Services Administration. Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings, NSDUH Series H-48, HHS Publication No. (SMA) 14-4863. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014.

Strategic Partner: Clinical Services Team, Healthesystems



THREE WAYS PHYSICAL THERAPISTS MANAGE PAIN

Did you know October is National Physical Therapy Month? At a time when patients often turn to medication to relieve chronic pain, physical therapy offers a safe and effective alternative to opioids and other prescription medications. In fact, opioids are often largely ineffective for chronic conditions like low back pain.

While opioids often only mask the sensation of pain, physical therapists treat pain differently. Physical therapists are often able to help patients manage pain through just three simple steps:

1. Exercise

A recent study found that those who exercised on a regular basis, more than three times per week, experienced 28% less chronic widespread pain. Physical therapists can recommend specific exercises to help you reach your goals.



2. Manual Therapy

A hands-on approach to treating pain can effectively reduce your pain and improve your movement. Physical therapists may use manipulation or joint and soft tissue mobilizations, as well as other strategies in your care.

3. Education

Research has found that patients who attend a short educational session about pain are less likely to seek treatment than their peers who did not receive education about pain. Your physical therapist will discuss your pain history and help set realistic expectations about your treatment.

If you do sustain an injury, consider adding a physical therapist as a valuable part of your recovery team.

American Physical Therapy Association

CONFERENCE CONNECTION

Plan now to meet representatives from Johns Eastern at an upcoming conference:

Virginia Risk Management Society (RIMS) Educational Conference
October 3 - 4 • Virginia Beach, VA

Florida Public Risk Management Association (PRIMA) State Conference
October 14 - 17 • Sarasota, FL

Virginia Workers' Compensation (VWC) Educational Conference
October 17 - 18 • Richmond, VA

Georgia Association of School Business Officials (GASBO) Conference
November 6 - 9 • Augusta, GA

National Workers' Compensation and Disability Conference & Expo
December 5 - 7 • Las Vegas, NV

Virginia Self-Insurers Association Annual Meeting
December 5 - 6 • Richmond, VA

GET SOCIAL WITH US!



FL TO LAUNCH SAFETY APP

The State of Florida has announced that it will soon launch a new app that will allow people to anonymously report suspicious activity in the state's schools.

Damien Kelly, the executive director of Florida's newly created Office of Safe Schools, recently reported that the department expects to launch the FortifyFL app this fall. This past spring, state legislators set aside \$400,000 to develop the app in the aftermath of the mass shooting at Marjory Stoneman Douglas High School, where 17 students and faculty were killed.

Kelly told the Florida Board of Education that the app will be designed to send information to threat assessment teams, including the school resource officer assigned to individual schools. Kelly also added that some tips would go directly to 911, such as if someone saw a student placing a gun in a backpack.

Florida Department of Education, Office of Safe Schools

ARE YOU FLU READY?

A new Centers for Disease Control and Prevention (CDC) supported study published in the journal *Vaccine* and conducted over multiple flu seasons shows that getting a flu shot lessens the risk of severe influenza (flu) among adults, including reducing the risk of hospitalization and admission to the intensive care unit (ICU), and also lessens the severity of illness.

While there are many different flu viruses, flu vaccines typically protect against the three or four viruses that research suggests will be most common. Symptoms of the flu usually come on quickly, last several days and can include fever, aches, chills, fatigue, cough and headache.

The CDC recommends an annual flu vaccine for everyone 6 months and older. While annual flu vaccination varies in how well it works, officials stress it is still the best available way to prevent flu and its potentially serious consequences.

Centers for Disease Control and Prevention

JUSTIFIABLE REFUSAL

Continued from page 1...

As these cases make clear, there is little consensus (and, in fact, literal dissension) as to what a JCC may consider when weighing a claimant's refusal of employment. These two cases suggest that a claimant's commute might even be considered. In light of the broad discretion that seems to be afforded to the JCC, we recommend that these situations continue to be analyzed on a case-by-case basis.

The *Rodriguez* decision is not yet final and we will continue to monitor it for further activity.

¹ See s. 440.15(6), Fla. Stat.; *Ullman v. City of Tampa Parks Dep't*, 625 So. 2d 868, 873 (Fla. 1st DCA 1993).

² *EmployBridge v. Rodriguez*, No. 1D17-4424, 2018 Fla. App. LEXIS 12712, at *1 (1st DCA Sep. 7, 2018).

³ *Orange Cty. Bd. of Cty. Comm'rs v. Yaeger*, No. 1D17-2399, 2018 Fla. App. LEXIS 3108, at *1 (1st DCA Mar. 2, 2018).

Kristen Magana, Esq. and Megan Oliva
Broussard, Cullen & Blastic, P.A.

JE SUPPORTS ALZHEIMER'S



Rose Rome
Executive Assistant

In the third quarter, Johns Eastern is pleased to again support the Alzheimer's Association—Florida Gulf Coast Chapter. The aim of the Alzheimer's Association is to advance the research available to fight Alzheimer's, while enhancing care and support for those living with the disease. Our goal is to raise \$2,500, while increasing awareness of Alzheimer's and other brain issues.

For the second year, the JECO team will join over 100 teams to support the Sarasota/Manatee County Walk to End Alzheimer's and those coping with the disease. This event will take place on November 17, 2018 at Benderson Park in Sarasota, FL.

alzheimer's  association®

the compassion to care, the leadership to conquer®

JOHNS EASTERN STOPS FRAUD IN ITS TRACKS

The Johns Eastern claims team remains diligent in reporting suspicious claims to the Florida Division of Investigative and Forensic Services.

As statutorily mandated under F.S. 440.105, all suspicious claims shall be reported. This was once again successfully demonstrated by the Johns Eastern staff regarding a claim from mid-2016.

During the initial handling of this matter, the claimant provided a sworn statement that she had not received prior medical treatments for this alleged injury. However, it was discovered that the claimant had a lengthy previous medical history, including multiple non-disclosed and specific treatments to the injured area prior to the reported workers' compensation accident.

Based upon these findings, the Johns Eastern team was statutorily required to report the claim to their SIU department, Command Investigations. An investigation ensued, and evidence was compiled that supported the

initial referral of a non-disclosed pre-existing injury/treatment. The evidence was ultimately presented to the Florida Division of Investigative and Forensic Services, Bureau of Workers' Compensation Fraud in September of 2016.

Following a thorough and independent investigation by the fraud division and the applicable Florida State Attorney's office, it was determined there was sufficient evidence to issue an arrest warrant for the claimant.

The claimant was arrested in May of 2017 and charged for violating Florida Statute 440.105(4)(B)(2) – Workers' Compensation Fraud less than \$20,000.

After extensive legal proceedings, the claimant changed her plea to nolo contendere/no contest and was ordered to pay \$1,906.62 in enforceable restitution.

Strategic Partner:
Command Investigations



BY THE NUMBERS: SIU PERFORMANCE REVIEW

With Command Investigations supporting our anti-fraud efforts statewide, Johns Eastern has seen impressive results in our SIU performance in just the first eight months of 2018:

21
Analyses
& Submissions

9
Evidence
Presentations

10
Open
Criminal Cases

23
Open
TIPS

1
Arrest

2
Convictions

\$8,240
Restitution
Ordered

Strategic Partner:
Command Investigations



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- National Council on Compensation Insurance
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NCCI PROPOSES RATE DECREASE IN FL

The National Council on Compensation Insurance (NCCI) recently proposed a 13.4% rate decrease effective in 2019 for all workers' compensation filings in Florida.

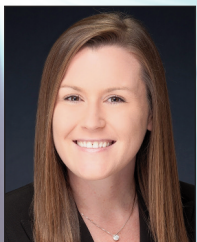
In 2016, two separate Florida Supreme Court decisions resulted in changes to the workers' compensation landscape. Those cases, *Castellanos v. Next Door Company, et al.* and *Westphal v. City of St. Petersburg, et al.* brought about retroactive changes to claimant attorney fee and benefit levels. The primary driver behind the recommendation is

the long-term decline in claim frequency offsetting increases in claim severity and cost increases from the *Castellanos* and the *Westphal* court cases. Policy Year 2017 will be the first full policy year post-*Castellanos*, but the full effects of that Court decision will not materialize for several years to come.

The recommendation is currently under review with Florida's Office of Insurance Regulation. If approved, the new rates will take effect on January 1, 2019.

National Council on Compensation Insurance

IN THE SPOTLIGHT



Meet Kristin Brown, Johns Eastern's Special Accounts Supervisor! Kristin joined Johns Eastern in 2012 when she began her employment as a workers' compensation adjuster. She handled lost time claims for self-insured public and private entities. Kristin was promoted to Account Manager in early 2015 and served as the primary client contact for any administrative and regulatory needs. In 2018, she was promoted to Special Accounts Supervisor overseeing our Account Management and Marketing Departments.

Kristin obtained her General Lines (Property & Casualty) Agent License in 2017. She has a Bachelor's degree in Public Health from the University of South Florida. She is currently working toward her Associate in Risk Management (ARM) through The Institutes.

When she is not in the office, you can find her spending time with her husband Tyler and almost two-year-old son Weston and cheering on the USF Bulls during football season. And in exciting family news, Kristin and her husband are proud to announce they are looking forward to a new addition to their family—a baby girl due in January!