The Law Offices of Bolton & Helm, LLP

CASE LAW UPDATE

1st DCA Limits Employer/Carrier's Right To IME

In Lehoullier v. Fire Equipment Services, 2010 WL 3398143 (Fla. 1st DCA, August 31, 2010), The 1st DCA held that, in the absence of a petition or dispute, the Employer/Carrier has no right to obtain an IME. In that case, the claimant sustained multiple orthopedic, neurological and mental injuries. Petitions were filed and all issues except for attorney's fees were dismissed at mediation. The Employer/Carrier sought an IME with a neuropsychologist afterward and the Claimant objected. The JCC entered an order compelling the Claimant to attend the IME. The appellate court reversed the order and held that there was no dispute under F.S. 440.13(5)(a), as the claims had been dismissed and no medical care was denied. Further, even though a question remained as to whether the claimant was obtaining adequate treatment and making appropriate progress under F.S. 440.13(2)(d), that was not sufficient to allow the Employer/Carrier to obtain an IME.

Discussion

This appears to be another example of the 1st DCA limiting the authority of the Employer/Carrier. In order for there to be a dispute, a benefit must be in a denied status. Thus, when attending mediation, defense should retain the right under the mediation agreement to obtain an IME that might be foreseen in anticipation of the claimant's status changing.

Brian Bolton, Esq., George Helm, Esq., John C.E. Sung, Esq.,
George Boring, Esq., Kaitlin H. Clark, Esq.

Bolton & Helm, LLP

723 East Colonial Drive, Suite 200, Orlando, Florida 32803

Phone: (407) 781-0345; Fax: (407) 781-0346

www.BoltonHelmLaw.com

(Please advise us if you would like to be removed from this News Group)