

## SHIFTY BURDENS, TRIGGERING EVENTS & TWO-TIERED ANALYSIS

Workers' Compensation Section

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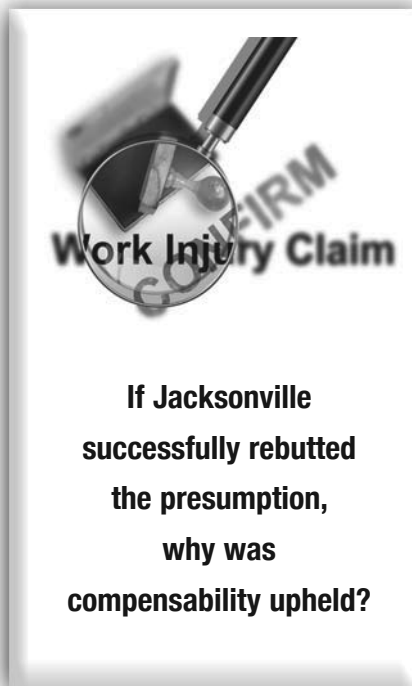
**O**n April 13, 2017, the First District Court of Appeal decided *City of Jacksonville v. Ratliff*, 2017 WL 1371508 (Fla. 1st DCA Apr. 13, 2017), which deserves a detailed review by all workers' compensation practitioners for four reasons. First, the opinion provides a detailed analysis and history of the "Heart and Lung presumption" set forth in section 112.18, Florida Statutes. Second, the opinion explains the varied and complicated burdens of proof that apply in workers' compensation cases. Third, it applies the multiple burdens of proof as they shift in presumption claims (and all occupational disease claims). Fourth, the court addresses "triggering events" for cardiac claims, and again explains how burdens of proof shift for claims based on triggering of a pre-existing, dormant condition.

Ratliff, a firefighter for 26 years, suffered a myocardial infarction (MI) at work during an "extremely stressful" meeting. His employer initially authorized treatment by a cardiologist, who noted a pre-existing history of diabetes, high cholesterol, smoking, and a family history of early onset coronary artery disease (CAD). According to the cardiologist, the history

of diabetes, smoking, and CAD (known as "risk factors") had risen to the level of causative factors for the claimant's CAD and MI and were unrelated to his work. Thus, the employer denied the claim.

So the claimant brought a "pure presumption" claim under section 112.18, Florida Statutes. That is, he established the four elements required under the statute, but he offered no actual medical evidence of occupational causation for his CAD or MI. His independent medical examination (IME) physician acknowledged the pre-existing risk factors, although he opined that no one could identify, with any degree of medical certainty, which risk factors *caused* the MI or CAD. The employer agreed that the claimant had established the "heart-lung" presumption; however, it argued the presumption was rebutted through the treating cardiologist's testimony. The Judge of Compensation Claims disagreed and awarded compensability.

In affirming the JCC order, the First DCA noted that because the claimant brought a presumption-only claim (i.e., pure presumption), the employer's burden on rebuttal was to provide "competent



evidence" that the disease was not work-related. The First DCA made clear that the major contributing cause burden, found elsewhere in Chapter 440, did not apply. Because the employer offered testimony by the claimant's IME that causation was unknown, as well as testimony by the treating

cardiologist that the cause was pre-existing and non-occupational, the First DCA held the employer met this burden.

So if Jacksonville successfully rebutted the presumption, why was compensability upheld? Well, the First DCA explained its reasoning in 19 pages and this column is limited to 500 words, so do read the opinion. But the answer lies in the "necessity of application of a two-tiered rebuttal analysis" when heart disease results from a combination of an underlying condition with a "triggering event," such as the

extremely stressful meeting underpinning the *Ratliff* claim.



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