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REPLY STATEMENT OF THE CASE

Petitioners, City of Holmes Beach and ISAC, rely upon their Statement of the Case as provided in their Initial Brief filed with this Court.

REPLY STATEMENT OF THE FACTS

Petitioners, City of Holmes Beach and ISAC, rely upon their Statement of the Facts as provided in their Initial Brief filed with this Court. Petitioners take issue, however, with Claimant's assertion that the medical experts testified that Claimant's condition was caused by the struggle and shooting accident on July 17, 1985. (Respondent's Brief pg. 2) Although several experts stated that the Claimant's post-traumatic stress syndrome was connected to the psychological trauma of the shooting, no expert stated that the Claimant's mental condition was the result of any physical trauma.

POINT ON APPEAL

WHETHER SECTION 440.02(1), FLORIDA STATUTES
(1985), DEFINING "ACCIDENT" EXCLUDES A MENTAL
OR NERVOUS INJURY WHERE THE ALLEGED PHYSICAL
INJURY SUFFERED BY THE CLAIMANT RESULTS IN
ONLY MINOR PHYSICAL CONSEQUENCES.

REPLY ARGUMENT

SECTION 440.02(1), FLORIDA STATUTES (1985),
DEFINING "ACCIDENT" EXCLUDES A MENTAL OR
NERVOUS INJURY WHERE THE ALLEGED PHYSICAL
INJURY SUFFERED BY THE CLAIMANT RESULTS IN
ONLY MINOR PHYSICAL CONSEQUENCES.

The Claimant devotes a large portion of his brief to the proposition that there is evidence to support the JCC's finding that he suffers from post-traumatic stress syndrome. This argument misses the point. The Employer/Carrier do not contend that the medical evidence does not support a finding that the Claimant suffers from post-traumatic stress disorder. Rather, the Employer/Carrier contend the JCC erred as a matter of law in determining that Mr. Grace's post-traumatic stress disorder is a compensable injury. The Employer/Carrier also do not contend that there must be a "disabling" physical injury in order for there to be compensation for a mental or nervous injury. Under Florida law, however, in order for a mental or nervous injury to be compensable, there must be an actual physical injury or trauma upon which to predicate the compensation claim. Additionally, this physical injury or trauma must be a significant causative factor of the Claimant's ensuing psychiatric impairment. Polk Nursey Company, Inc. v. Riley, 433 So.2d 1233 (Fla. 1st DCA 1983).

The Claimant cites City of Tampa v. Tingler, 397 So.2d 315 (Fla. 1st DCA), rev. denied, 441 So.2d 381 (Fla. 1981), as support for his claim that he is entitled to compensation for his psychiatric illness. The Claimant's reliance on Tingler is misplaced. In Tingler, there was medical testimony that the "physical involve-

ment of the struggle did in fact contribute a lot to the cause of the psychiatric problems." Id. at 317. There was also evidence of a physical struggle and that the claimant's arm was severely twisted. Here, there is absolutely no testimony, medical or otherwise, which establishes a causal relationship between the Claimant's psychiatric disability and any even minor non-permanent physical trauma. Prahl Brothers, Inc. v. Phillips, 429 So.2d 386 (Fla. 1st DCA), pet.rev. denied, 440 S0.2d 353 (Fla. 1983), is also not helpful to the Claimant's position. In that case, there was testimony from the claimant's treating physician which clearly established that the gun being held to the claimant's head, and a ring being physically removed from her finger were significant causative factors in the claimant's subsequent mental injury. Proof of such a causal relationship is clearly absent in this case.

The Claimant also contends that Sheppard v. City of Gainesville Police Department, 490 So.2d 972 (Fla. 1st DCA 1986), is helpful to his position. This contention is without merit. In Sheppard, the medical evidence supported the conclusion that the claimant's psychiatric disability was due to a combination of the fright and excitement, and the trauma of being grabbed by the accident victim. Here, there is absolutely no medical testimony that the Claimant's psychiatric condition resulted from an employment-related physical injury. See, e.g., Amoco Container Company v. Aviles, 433 So.2d 1233 (Fla. 1st DCA 1983).

The Claimant states that this Court has long recognized that mental or nervous injuries are compensable under the Workers'

Compensation laws. In support of this position, the Claimant cites Lyng v. Rao, 72 So.2d 53 (Fla. 1954). In Lyng, it was undisputed that the claimant was struck by lightening and that because of this incident:

a perfectly healthy and normal woman was almost instantaneously transformed to a condition sufficiently serious to necessitate hospitalization for over two months and to render her unable to work for nearly four months. Another difference is the nature of the force causing the alleged injury, a most important factor.

72 So.2d at 56. The situation in Lyng is far different than exists here, where Mr. Grace rather incredibly claims that the fact his "gun discharged twice, establishing further impact and trauma" is sufficient to constitute a physical injury. This is nothing more than an attempt by the Claimant to make the shooting victim's trauma his own.

In Oolite Concrete Company v. Carver, 145 So.2d 733 (Fla. 1962), the claimant suffered a physical injury when he was blown into the air because of an accidental discharge of dynamite. The employer/carrier accepted the physical injury as compensable and furnished compensation benefits to the claimant. Mr. Carver subsequently suffered a disabling anxiety complex. The award of benefits for the psychiatric disability was upheld on the basis that some physical trauma or organic injury was found to be responsible for the disabling mental condition. Id. at 734. In the case at bar, no physical trauma or organic injury, even a relatively minor one, was found to be the cause of the Claimant's

post-traumatic stress syndrome. Watson v. Melman, Inc., 106 So.2d 433 (Fla. 3d DCA 1958), cert. denied, 111 So.2d 40 (Fla. 1959), is also not helpful to the Claimant's position. In Melman, as in Lyng and Oolite, there was medical testimony to support a causal connection between a physical injury and the subsequent neurosis suffered by the claimant. 106 So.2d at 435.

As the above cases demonstrate, the courts of Florida have never held that a purely mental or nervous injury is compensable under the Workers' Compensation system. The claimant must prove that a physical injury or trauma caused the subsequent psychiatric condition. The Claimant suggests that this Court "should join the majority of jurisdictions in extending Workers' Compensation benefits to claimants who suffer mental and behavioral injuries as a result of on the job traumatic episodes regardless of whether the trauma results in a disabling injury." (Respondent's Brief pg.4) This Court has noted on previous occasions that if an action is to be created "it is wiser to leave it to the legislative branch with its greater ability to study and circumscribe the cause." Zorzos v. Rosen by and through Rosen, 467 So.2d 305, 307 (Fla. 1985). Section 440.02(1), Fla. Stat. (1985), applicable to this action, provides that "a mental or nervous injury due to fright or excitement only . . . shall not be deemed to be an injury by accident arising out of employment." In its last legislative session, the Florida Legislature had the opportunity to expand the statutory definition of the term "accident." It did not. Instead, it amended §440.02(1), Fla. Stat., to exclude

mental or nervous injuries due to not only fright or excitement, but also due to stress. Ch. 90-201, §8, Laws of Florida. To adopt the position advocated by the Claimant would be contrary to the legislatively mandated requirement that a physical injury or trauma must accompany any claim for mental or nervous injury.

The Employer/Carrier reiterate their position that the current interpretation of §440.02(1), Fla. Stat., and that advocated by the Claimant, would allow compensation benefits for mental or nervous injuries that could conceivably stem from any physical contact. The Claimant's response to this position demonstrates the bizarre results that could occur. For example, accepting the Claimant's logic, a simple handshake could satisfy the physical injury requirement needed to support a claim for a psychiatric disorder. Similarly, according to the Claimant's reasoning, a routine physical examine conducted by a physician, in which the patient is touched, could be sufficient physical contact to support a subsequent claim for mental or nervous injuries. Such results would effectively negate the physical injury requirement contained in §440.02(1), Fla. Stat., and defeat the purpose of the Workers' Compensation Act. There simply must be an actual physical injury or trauma to support any claim for nervous or mental injury. Additionally, that physical injury must be shown to have caused the neurosis. In the absence of such proof, the claim should not be found to be an injury or accident arising out of the course and scope of employment.

The First District and the JCC erred in concluding that the Claimant's post-traumatic stress disorder is a compensable injury. This Court should reaffirm the well-established principle that there must be an actual physical injury or trauma upon which to predicate compensation for a neurosis. A mere touching should not be sufficient to satisfy this requirement. City Ice and Fuel Division v. Smith, 56 So.2d 329 (Fla. 1952); Amoco Container Company v. Aviles, 433 So.2d 1894 (Fla. 1st DCA 1984); Polk Nursery Company, Inc. v. Riley, 433 So.2d 1233 (Fla. 1st DCA 1983). This Court should answer the certified question to exclude from the definition of accident contained in §440.02(1), Fla. Stat., a mental or nervous injury where the physical contact to the Claimant results in only minor, if any, physical consequences. This Court should then reverse the decision of the First District and require that the action be remanded to the JCC for entry of an order denying compensability for the Claimant's psychiatric condition.

CONCLUSION

A mental or nervous injury due to fright or excitement only is not an injury by accident in the course of employment and is not compensable. Section 440.02(1), Fla. Stat. (1985). There must be an actual physical injury upon which to predicate a compensation claim for disability from a neurosis. A mere physical touching or minor physical impact should not be equated with the physical injury or trauma required to support a claim for compensation. In this case, Mr. Grace's post-traumatic stress syndrome developed because he removed his pistol from its holster and shot a man in the back, twice, accidentally. This disorder clearly falls within the statutory exclusion for fright and excitement. This Court should reverse the First District's opinion in this case, answer the certified question to exclude from the term "accident" a mental or nervous injury where the injury suffered by the Claimant results in only minor physical consequences, and require that the action be remanded for entry of an order denying compensation for the Claimant's psychiatric disability.

Respectfully submitted,

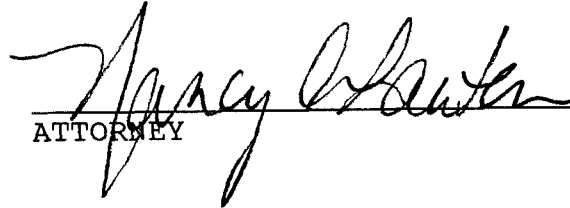
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 21st day of January, 1991, to: ALEX LANCASTER, Esquire, Post Office Drawer 4257, Sarasota, Florida 34230.


ATTORNEY