

**OSCEOLA COUNTY SCHOOL BOARD AND FLORIDA  
SCHOOL BOARD INSURANCE TRUST CLAIMS ADMINISTRATION, Appellants,**

**v.**

**IVONNE PABELLON-NIEVES, Appellee.**

**CASE NO. 1D14-2092**

**DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA**

**Date of Accident: June 4, 2010**

**December 3, 2014**

NOT FINAL UNTIL TIME EXPIRES TO FILE  
MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

An appeal from an order of the Judge of  
Compensation Claims.  
W. James Condry, II, Judge.

Pamela J. Cox and Jodi K. Mustoe of Cox &  
Rouse, P.A., Maitland, for Appellants.

Michael J. Winer of the Law Office of Michael  
J. Winer, P.A., Tampa; Kellye A. Shoemaker,  
Maitland, for Appellee.

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PER CURIAM.

In this workers' compensation appeal, the  
Employer/Carrier argues that the Judge of  
Compensation Claims (JCC) erred in awarding  
continuing medical treatment for Claimant's  
work-related neck injury. Finding no error in the  
JCC's award of the continuing care, we affirm  
the order. We write, however, to clarify  
application of section 440.09(1)(b), Florida  
Statutes (2009).

Section 440.09(1)(b) provides:

If an injury arising out of and in  
the course of employment  
combines with a preexisting  
disease or condition to cause or  
prolong disability or need for  
treatment, the employer must  
pay compensation or benefits  
required by this chapter only to  
the extent that the injury arising  
out of and in the course of  
employment is and remains

more than 50 percent responsible  
for the injury as compared to all  
other causes combined and  
thereafter remains the major  
contributing cause of the  
disability or need for  
retreatment. Major contributing  
cause must be demonstrated by  
medical evidence only.

This court addressed application of this  
subsection in Byszczynski v. United Parcel  
Services, Inc., 53 So. 3d 328 (Fla. 1st DCA  
2010). Based on a review of the trial transcript,  
the order on appeal, and the briefs submitted by  
the parties, it appears that the holding in  
Byszczynski is often misunderstood by both the  
bench and the bar.

Byszczynski ultimately turned on an issue of  
competent, substantial evidence rather than an  
issue of law. This court held that the JCC's  
ruling that the degenerative condition was the  
major contributing cause of the need for  
treatment was not supported by any medical  
evidence (and in fact the expert medical advisor

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expressly testified that the preexisting  
degenerative disc disease was not a cause of Mr.  
Byszczynski's need for surgery). *Id.* at 330-31.  
Although this court observed in Byszczynski that  
the claimant's preexisting degenerative disc  
disease "merely bespeaks Claimant's age," such  
was not a holding that age-related illnesses or  
conditions can never be a contributing cause of a  
disability or need for treatment for the purposes  
of major contributing cause analysis. *Id.* at 331.  
Closer review of Byszczynski reveals that it does  
not matter whether a preexisting condition is

"age-appropriate;" what matters is whether there is medical evidence that it is the major contributing cause of the need for the requested treatment. See § 440.09(1)(b), Fla. Stat. (2012) (providing that if compensable work injury combines with preexisting condition to cause or prolong need for treatment, employers need provide benefits only to extent work injury is and remains major contributing cause of need for benefits); Ch. 03-412, § 6, Laws of Fla. (amending section 440.09(1)(b) as of October 1, 2003, to require that major contributing cause be proven "by medical evidence only").

Here, the JCC found Claimant had a pre-existing condition—one based on degenerative changes to her cervical spine and not based on any prior accident. The JCC distinguished the facts of this case from the facts in Byszczynski. The JCC explained that in Byszczynski, the degenerative condition in Mr. Byszczynski's spine did not independently require any level of treatment either before or after the

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worker's two compensable accidents. For that reason, the JCC correctly explained that in Byszczynski this condition was not properly considered a contributing cause for major contributing cause purposes.

On the other hand, the JCC found that there was evidence that Ms. Nieves' preexisting neck condition required some level of treatment prior to this workplace accident; consequently, a question arose as to "whether Ms. Nieves' degenerative neck condition merely bespoke of her age or whether it was a preexisting condition *requiring treatment* that may be considered a contributing legal cause of her injury and need for treatment and thus—a proper subject for the application of the major contributing cause standard." (Emphasis in original.)

The JCC then proceeded to engage in a major contributing cause analysis. In doing so, he appropriately considered the nature of the preexisting condition—including the level of treatment necessitated by the preexisting condition prior to the date of the accident—as compared to Claimant's current condition and need for treatment. Because competent, substantial evidence supports the JCC's finding that the major contributing cause of Claimant's need for ongoing treatment was her compensable injury, we affirm the order.

AFFIRMED.

THOMAS, ROBERTS, and ROWE, JJ.,  
CONCUR.