

**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.