

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AREANI T. DELEON, o/b/o JORGE)
DELEON,)
)
Petitioner,)
)
vs.) Case No. 04-0266
)
DEPARTMENT OF MANAGEMENT)
SERVICES, DIVISION OF)
RETIREMENT,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A final hearing was held in this case before Administrative Law Judge Carolyn S. Holifield by video teleconference on October 5, 2004, at sites in Tallahassee and Tampa, Florida, with Petitioner appearing at the Tampa site and Respondent and the undersigned appearing at the Tallahassee site.

APPEARANCES

For Petitioner: David J. Plante, Esquire
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For Respondent: Larry D. Scott, Esquire
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STATEMENT OF THE ISSUES

The issue in this case is whether Petitioner, Areani T. DeLeon, is entitled to receive "in line of duty" death benefits under the Florida Retirement System.

PRELIMINARY STATEMENT

After her husband, Deputy Jorge DeLeon of the Hillsborough County Sheriff's Office, died unexpectedly on May 5, 2003, Petitioner, Areani T. DeLeon, applied for "in line of duty" benefits under the Florida Retirement System ("FRS"). By letter dated September 10, 2003, Respondent, the Department of Management Services, Division of Retirement ("Division" or "Respondent"), notified Petitioner that her application for in-line-of-duty death benefits from the retirement account of the deceased member of the FRS was denied. Petitioner challenged the decision and timely requested a formal hearing. Thereafter, the Division referred the matter to the Division of Administrative Hearings. The undersigned initially scheduled the final hearing for March 31, 2004, but rescheduled the hearing several times after the parties requested and were granted continuances. As noted above, the final hearing was held on October 5, 2004.

On October 4, 2004, Petitioner filed a Motion for Partial Summary Judgment and a Motion in Limine. Prior to the evidentiary part of the final hearing, argument on the motions

by counsel for the parties was heard. The undersigned denied both motions.

At the hearing, Petitioner testified on her own behalf through the assistance of her English/Spanish language translator, Deacon Jose R. Rios. Petitioner offered and had received into evidence two exhibits, the depositions of the following witnesses: Charity Cosby, a deputy with the Hillsborough County Sheriff's Office; and John C. Dormois, M.D., a cardiologist who was accepted as an expert in that field. Respondent presented the testimony of Ms. Stanley Colvin, a benefits administrator with the Division, who was accepted as an expert in the area of survivor benefits under the FRS. Respondent's Exhibit 1, Deputy DeLeon's pre-employment physical report, was offered and received into evidence. Respondent offered its Exhibit 2 into evidence, but that document was rejected. Respondent then proffered Exhibit 2. Additionally, at Respondent's request, the undersigned took official recognition of Chapter 121, Florida Statutes (2003); Subsections 121.021(14), 121.09(7), and 121.118(1), Florida Statutes (2003); and Florida Administrative Code Rules 60S-4.008 and 60S-6.001.

The parties also offered and had received into evidence as Joint Exhibits 1 through 5, the depositions of the following witnesses and the exhibits related or attached thereto: S. Rao Korabathina, M.D., a general practitioner; Benedict S.

Maniscalco, M.D., a cardiologist and expert witness in that field; Sergeant Carmine Pisano, an employee of the Hillsborough County Sheriff's Office; Deputy Arturo Peralta, an employee of the Hillsborough County Sheriff's Office; and Susan S. Ignacio, M.D., an associate medical examiner, who was accepted as an expert in that field, as well as a medical expert.

The Transcript of the final hearing was filed with the Division of Administrative Hearings on October 15, 2004. At the conclusion of the hearing, the time for filing proposed recommended orders was set for ten days after the Transcript was filed. On or about October 26, 2004, Petitioner requested and was granted an extension of time to file her proposed recommended order. The Division and Petitioner filed their Proposed Recommended Orders on October 28 and November 1, 2004, respectively. Both Proposed Recommended Orders have been carefully considered in preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at hearing and on the entire record of this proceeding, the following Findings of Fact are made.

1. From November 2002, until his death on May 5, 2003, Jorge DeLeon ("Deputy DeLeon") served and was employed as a deputy sheriff for the Hillsborough County Sheriff's Office ("Sheriff's Office"). During the seven months Deputy DeLeon was

employed as a deputy sheriff in Hillsborough County, he was a probationary employee.

2. On the morning of May 5, 2003, between 9:00 a.m. and 9:30 a.m., while off-duty from the Sheriff's Office, Deputy DeLeon died while sitting in a chair at the bait and tackle fishing shop that he owned. At the time of his death, Deputy DeLeon was 40 years old and was survived by his wife, Petitioner, Areani T. DeLeon, and their minor son.

3. Deputy DeLeon was a member of the FRS, which is administered by the Division.

4. In order to vest in the FRS, an individual must have participated in the FRS for a period of six years. As a result of Deputy DeLeon's combined service with the Sheriff's Office and the Stuart Police Department in Stuart, Florida, Deputy DeLeon had five and one-half years of credited service in the FRS.

5. In October 2002, prior to Deputy DeLeon's being accepted for employment with the Sheriff's Office, he underwent a pre-employment physical examination administered at the University Community Hospital.

6. As part of Deputy DeLeon's pre-employment physical examination, an electrocardiogram (EKG) was performed; the results of the EKG were normal.

7. At the time the pre-employment physical examination was performed, Deputy DeLeon suffered from and was being treated for high blood pressure, also known as hypertension. The physician who conducted Deputy DeLeon's physical noted on the pre-employment physical examination report that Deputy DeLeon had high blood pressure. S. Rao Korabathina, M.D., a general practitioner, first saw and began treating Deputy DeLeon for high blood pressure on July 17, 2002.

8. Although Deputy DeLeon suffered from hypertension, the condition did not impede his being employed by the Sheriff's Office. In fact, Deputy DeLeon not only passed the pre-employment physical examination, but the physician who conducted the examination certified that the physical examination of Deputy DeLeon did not "evidence any acute or chronic illness, congenital abnormality, acquired deformity or disability which would prevent the applicant from performing the essential job functions of the Sheriff's office."

9. In November 2002, the month after his physical examination, Deputy DeLeon was employed as a deputy with the Sheriff's Office.

10. On January 13, 2003, two months after he was employed with the Sheriff's Office, Deputy DeLeon went to Dr. Korabathina for a regular office visit. During that visit, Dr. Korabathina examined Deputy DeLeon and found that his blood pressure was

significantly down from the level noted during Deputy DeLeon's first office visit in July 2002. Also, during the January 13, 2003, office visit, Deputy DeLeon reported that he was feeling fine and that his pre-employment physical examination was normal.

11. Throughout his tenure with the Sheriff's Office, Deputy DeLeon was assigned to work primarily in the Town and Country area of Hillsborough County ("Town and Country" or "area"), an area with a very large Hispanic population, which included many people who spoke only Spanish. Nevertheless, only a few bilingual deputies, including Deputy DeLeon, were assigned to work in that area.

12. Because Deputy DeLeon spoke and understood both Spanish and English, he was required to provide Spanish to English and English to Spanish translating services for the calls of other deputies who could not speak and understand Spanish. The translation services which Deputy DeLeon was required to provide were in addition to the other regular job responsibilities he was required to perform as a deputy.

13. The normal schedule for deputies was a rotating shift which consisted of working 12-hour shifts, five days one week and then working 12-hour shifts, two days the following week.

14. As an employee of the Sheriff's Office, Deputy DeLeon's on-the-job activities, at times, involved high levels

of physical and mental exertion and stress. In any given week, deputies were required to answer calls for service; conduct timely criminal investigations; and write criminal activity reports for all criminal investigations. In some instances, if a supervisor or someone in the chain-of-command determined that the written reports were inadequate, deputies were required to rewrite or correct the report.

15. Although deputies were required to complete the written reports of an investigation immediately or soon after their investigations were completed, bilingual deputies, including Deputy DeLeon, were often unable to accomplish this task because they were routinely required to leave their calls and go to provide translation services to non-Spanish-speaking deputies.

16. At all times pertinent to this proceeding, Deputy DeLeon and another bilingual deputy, Deputy Arturo Peralta, a 14-year veteran of the Sheriff's Office, were frequently required to serve as translators for other deputies.

17. As a result of their being required to provide translation services to non-Spanish-speaking deputies, bilingual deputies, including Deputies DeLeon and Peralta, assigned to the Town and Country area were overworked and under stress.

18. Employees of the Sheriff's Office were aware that the bilingual deputies assigned to Town and Country had a heavier

workload than the non-Spanish-speaking deputies and were under more stress because of the workload.

19. According to the credible testimony of Deputy DeLeon's direct supervisor, Sergeant Carmine Pisano, "an individual [deputy] who is bilingual, it's almost a curse in Town and Country, because we have an enormous influx of Spanish-only speaking individuals moving into the area and we do not have enough Spanish-speaking deputies."

20. A probationary deputy, Deputy Charity Cosby, who spoke only English and began working for the Sheriff's Office the same day that Deputy DeLeon started work there, testified credibly that the bilingual deputies had more work to do than non-Spanish-speaking deputies. Deputy Cosby attributed the bilingual deputies' extra workload to the fact that they were required to go not only on their calls, but also on the calls of non-Spanish-speaking deputies when translation services were needed.

21. Deputy Auturo Peralta, a 14-year deputy with the Sheriff's Office and the other bilingual deputy who worked with Deputy DeLeon, testified credibly that he was required to perform translation services in addition to his regular duties and that the additional workload was frustrating and stressful and "added undue stress" to his job as a deputy.

22. Deputy DeLeon was conscientious about performing his job as deputy with the Sheriff's Office and had some good skills because of his previous experience in law enforcement. However, Sergeant Pisano believed that Deputy DeLeon was deficient with regard to the amount of time it took him to complete his investigations and written investigation reports, as well as the quality of the reports. These were areas in which Sergeant Pisano expected Deputy DeLeon to improve. To this end, Sergeant Pisano talked to Deputy DeLeon about his being deficient and needing to improve in those areas.

23. In the week prior to his death, Deputy DeLeon worked for the Sheriff's Office five days. On each of those days, Deputy DeLeon worked his normal 12-hour shift. Three of those five days, May 2, 3 and 4, 2003, were the days immediately prior to Deputy DeLeon's death.

24. During the consecutive three days before his death, Deputy DeLeon was under a high-level of stress due to his work-related responsibilities at the Sheriff's Office. In addition to the stress of being a relatively new and probationary employee with the Sheriff's Office, Deputy DeLeon had been counseled for being too slow in his investigations and pressed to improve his report writing. Moreover, Deputy DeLeon had the added responsibility of providing translating services for other deputies, in addition to his other job responsibilities.

25. At approximately 6:00 a.m. on May 4, 2004, the day before his death, Deputy DeLeon, while on a call providing translating services to Deputy Cosby, advised her that "he wasn't feeling very good" and that he "had had heartburn all weekend."

26. Later on May 4, 2003, Sergeant Pisano ordered Deputy DeLeon to leave a child abuse investigation that Deputy DeLeon was conducting in order to answer a call and provide translation services involving a call for service in which a vendor selling Mother's Day flowers was accused of trespassing.

27. In the days prior to his death, Deputy DeLeon told his wife that he was upset and having problems with his supervisor, because the supervisor was being unjustifiably critical of him.

28. On May 4, 2003, while on duty with the Sheriff's Office, Deputy DeLeon called his house several times to check on his wife and son. During one of those telephone conversations, Deputy DeLeon told his wife that he was very frustrated about being pulled from his investigations before he had completed them in order to render translation services for other deputies. Later that day, Deputy DeLeon telephoned his wife, again, and told her that he was going to be late because he had been ordered by his supervisor to drop everything and re-do a previously completed investigation report that had been "kicked back," causing him to leave another investigation unfinished.

In order to re-do the report, Deputy DeLeon had to re-interview the Spanish-speaking witnesses in that particular case. This was not the first time that Deputy DeLeon's supervisor had required him to re-do an investigation report.

29. At or near the end of Deputy DeLeon's 12-hour shift with the Sheriff's Office, the evening before his death, Sergeant Pisano observed that Deputy DeLeon "looked extremely tired and pale." In describing Deputy DeLeon's appearance on the evening prior to his death, Sergeant Pisano testified as follows:

As I had said, he -- he looked tired to me and pale. It -- was enough that I recognized that.

* * *

Tired -- tired and -- pale. Three 12-hour shifts wear on you. And -- if you're running and running and running, it -- will take its toll. . . He just had that look in him that he was extremely -- more to the extreme end of being tired, and his -- his skin was pale.

30. Deputy DeLeon was still pale when he arrived home on May 4, 2003, after completing his third 12-hour shift in three consecutive days. He reported to his wife that he was physically exhausted and extremely fatigued. He also told his wife that over the last two days, he had been experiencing pains in his chest and arms while at work. Deputy DeLeon reported to his wife that he had experienced the sensation of something

coming up into his throat approximately 20 times while at work that day.

31. On the evening of May 4, 2003, Deputy DeLeon also reported to his wife that he was very angry due to problems he was experiencing with his supervisor. As he had in a telephone conversation with his wife earlier that day, Deputy DeLeon again told his wife that he was upset about his supervisor pulling him off his investigations before he was finished with them. He also explained to his wife his frustration at being pulled from what he considered to be a priority investigation of child abuse to a much lesser priority call that involved a Spanish-speaking vendor selling Mother's Day flowers. He reported to his wife that every time there was a call in which a Spanish-speaking deputy was needed as a translator, he was called. Deputy DeLeon was "very upset" about these events.

32. On the evening of May 4, 2003, after playing with his 3- or 4-year-old son a little while and talking to his wife about the matters discussed in paragraphs 30 and 31, Deputy DeLeon went to bed around 9:30 p.m.

33. Deputy DeLeon was off duty from the Sheriff's Office the following day, May 5, 2003. That morning, as he usually did on his days off, Deputy DeLeon went to work at the bait and tackle shop that he owned. Deputy DeLeon was happy and enjoyed being the owner and manager of the bait shop and considered his

responsibilities there to be more of a hobby than work. He enjoyed his time there because it gave him an opportunity to talk to friends and to teach and talk to people about fishing.

34. At about 9:15 a.m. on May 5, 2003, Deputy DeLeon was found dead in his bait and tackle shop. This was about 12 hours after he got home from his job with the Sheriff's Office.

35. When advised by the police of her husband's death, Mrs. DeLeon told the Port Richey Police Department investigators that Deputy DeLeon had been complaining of chest and arm pains over the last couple of days and that she advised Deputy DeLeon that he should go see a doctor, but he did not do so.

36. An autopsy was performed on May 6, 2003, by Susan S. Ignacio, M.D., an associate medical examiner for the Sixth District, which includes Pinellas and Pasco Counties, Florida. Dr. Ignacio is a Florida-licensed physician, who is board-certified in anatomic pathology.

37. Following the completion of the autopsy, Dr. Ignacio prepared an autopsy report which found that Deputy DeLeon had severe atherosclerosis, left descending artery; that the cause of death was atherosclerosis cardiovascular disease; and that the manner of death was "natural."

38. Dr. Ignacio included the following observations in the autopsy report: "The left anterior descending artery has severe atherosclerosis with up to 90% stenosis [blockage] by

atheromatous plaque. The left circumflex artery has moderate atherosclerosis. The right coronary artery has moderate atherosclerosis."

39. Atherosclerosis implies that there is cholesterol plaque, that is, fatty build-up within the arteries. The disease has a long incubation period and is, thus, pre-clinical for a "very very long time." Although, the development of the atherosclerosis begins early in childhood and is chronic and progressive, the disease is relatively silent and may not be evident until an event occurs.

40. Deputy DeLeon had high blood pressure at the time of his pre-employment examination. However, all the medical experts in this case agree; and it is found, that high blood pressure, or hypertension, does not evidence the condition of atherosclerosis.

41. After reviewing the information provided by the Sheriff's Office and/or Petitioner, Ms. Stanley Colvin, acting on behalf of the Division, concluded that Petitioner was not entitled to regular in-line-of-duty death benefits because Deputy DeLeon's death did not occur while he was on duty, but while he was at his bait shop. The Division's decision was based solely on the location of Deputy DeLeon's body at the time of death and did not consider the possibility of a nexus between

Deputy DeLeon's work-related duties and responsibilities and his death.

42. The Division also determined that Deputy DeLeon suffered from hypertension prior to employment with the Sheriff's Office. Based on that determination, the Division concluded that the statutory presumption set forth in Section 112.18, Florida Statutes (2003), did not apply.

43. At the time of his death, Deputy DeLeon had a cardiovascular disease (as the autopsy reflected) that had developed over a prolonged period of time, even though the condition had never been diagnosed. The diagnosis of atherosclerosis was a post-mortem diagnosis, and prior to his death, there was no evidence or indication that Deputy DeLeon suffered from the disease.

44. As a result of the atherosclerosis process, the blood vessels are narrowed. Even with the blockage in the artery, however, there was continued, but restricted, blood flow through Deputy DeLeon's severely narrowed artery.

45. The condition of a person with atherosclerosis is exacerbated by stress. The reason is that stress, physiologically, is attended by increases in the production of noradrenalin, norepinephrin compounds from the adrenal glands, which increases heart rate and blood pressure and causes vasoconstriction or narrowing of the arteries. This situation

increases the demand for blood flow and oxygen to the heart. However, in a person with atherosclerosis, this increased demand may not be met because stress may "greatly aggravate" or further the narrowing of the arteries, thereby further decreasing the blood flow to the heart. This decreased blood flow to the heart can lead to heart attack and/or sudden death.

46. Symptoms or manifestations of inadequate or decreased blood flow to the heart are angina (chest pain), shoulder pain, heartburn, fatigue, and/or shortness of breath, with angina being the most common symptom.

47. There is no evidence that Deputy DeLeon was experiencing an acute stressful situation on the day of his death.

48. Given the severe obstruction in the coronary artery, the symptoms Deputy DeLeon complained of in the days immediately prior to his death (tightness in his chest and pain in his left arm and shoulder) were consistent with someone having unstable angina, that is, intermittent chest pain for some time period before his death.

49. Dr. Benedict S. Maniscalco, the Division's expert, testified credibly that Deputy DeLeon's death was precipitated by a "rhythm disturbance," also known as arrhythmia and that this could have been caused by transient decreased blood flow to the heart. However, Dr. Maniscalco did not "attribute any

significant contribution of stress to his [Deputy DeLeon's] demise." The reason Dr. Maniscalco did not believe Deputy DeLeon's death was caused by job-related stress was that the data he reviewed and relied on in forming his opinion did not address the environmental stress factors that Deputy DeLeon experienced in his job with the Sheriff's Office in the days immediately prior to his death.

50. Because Deputy DeLeon had restricted blood flow to the heart, one of several factors, including stress, could have tipped the balance and created a situation that contributed to Deputy DeLeon's death.

51. In light of the stress that Deputy DeLeon was under while at his job with the Sheriff's Office on the days preceding his death and the impact that stress had on Deputy DeLeon (i.e., constriction of blood vessels, spasm of blood vessel, mediated by autonomic nervous system), as evidenced by his symptoms, Dr. Dormois testified, with a reasonable degree of medical certainty, that job-related stress was a contributing cause to Deputy DeLeon's death.

52. Considering the record as a whole, including the opinions of the experts, the greater weight of the evidence established that job-related stress was a contributing cause and factor to Deputy DeLeon's death.

CONCLUSIONS OF LAW

53. The Division of Administrative Hearings has jurisdiction of the parties and subject matter of this proceeding pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2004).

54. Subsection 121.091(7), Florida Statutes (2003), prescribes the benefits payable under the FRS and provides in pertinent part:

(d) Notwithstanding any other provision in this chapter to the contrary, with the exception of the Deferred Retirement Option Program, as provided in subsection (13):

1. The surviving spouse of any member killed in the line of duty may receive a monthly pension equal to one-half of the monthly salary being received by the member at the time of death for the rest of the surviving spouse's lifetime or, if the member was vested, such surviving spouse may elect to receive a benefit as provided in paragraph (b). Benefits provided by this paragraph shall supersede any other distribution that may have been provided by the member's designation of beneficiary.

55. Subsection 121.021(14), Florida Statutes (2003), provides in pertinent part:

(14) "Death in line of duty" means death arising out of and in the actual performance of duty required by a member's employment during his or her regularly scheduled working hours or irregular working hours as required by the employer. The administrator may require such proof as he or she deems necessary as to the time, date, and cause of death, including evidence from any available

witnesses. Workers' compensation records under the provisions of chapter 440 may also be used.

56. For "in line of duty" benefits to be payable pursuant to Subsection 121.09(7), Florida Statutes (2003), the deceased member must have died on the job while actually performing a required duty. See Kugler v. Department of Management Services, Division of Retirement, Case No. 02-2578 (DOAH January 21, 2003) (Final Order April 4, 2003).

57. It is undisputed that at the time of Deputy DeLeon's death, he was not on duty with the Sheriff's Office and was not performing duties required by that office. Therefore, benefits are not payable to Petitioner, as the surviving spouse, under Subsection 121.091(7), Florida Statutes (2003).

58. Although she is not eligible for benefits pursuant to Subsection 121.091(7), Florida Statutes (2003), Petitioner seeks benefits under Subsection 112.18(1), Florida Statutes (2003), which provides the following:

Firefighters and law enforcement or correctional officers; special provisions relative to disability.--

(1) Any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer or correctional officer as defined in s. 943.10(1), (2), or (3) caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to

have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter or law enforcement officer shall have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition. Such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

59. By enacting Subsection 112.18(1), Florida Statutes (2003), the Legislature recognized the risks and dangers involved in the covered categories of employees and provided a statutory presumption making it easier for such employees or their survivors to collect benefits. Pursuant to that provision, any impairment of health of any law enforcement officer caused by heart disease resulting in death is presumed to have suffered in the line of duty unless the contrary is shown by competent evidence. Moreover, in order for the presumption to apply, the law enforcement officer must have successfully passed a physical examination which failed to reveal evidence of such condition.

60. The initial burden of proof is on Petitioner to establish the facts upon which the presumption is based. If those facts are established, the burden then shifts to the Division, which may rebut the presumption by establishing by

competent evidence that the disease was caused by some other specific hazard or non-occupational hazard. However, the statutory presumption prevails where the medical evidence is conflicting and the quantum of proof is balanced. See Caldwell v. Division of Retirement v. Department of Administration, 372 So. 2d 438 (1979).

61. Petitioner has met her initial burden. The evidence established the following facts that give rise to the presumption in Subsection 112.18(1), Florida Statutes (2003): (1) Deputy DeLeon was a law enforcement officer; (2) Deputy DeLeon suffered or was stricken with a condition caused by heart disease and that lead to or resulted in his death; and (3) Deputy DeLeon successfully passed a physical examination upon entering his job as a law enforcement officer which failed to reveal any evidence of heart disease, the condition that caused his death.

62. Petitioner also presented competent and substantial evidence that job-related stress aggravated Deputy DeLeon's, previously undiagnosed heart disease which resulted in his death.

63. The Division argues that the presumption should not apply because Deputy DeLeon's pre-employment physical revealed that he suffered from high blood pressure or hypertension. While that fact is not disputed, the argument is rejected in

that it is inconsistent with the plain meaning of language in Subsection 112.18(1), Florida Statutes (2003). According to the plain meaning of that statute, if all other facts are established, the presumption will apply unless the condition that was revealed in the physical examination upon entering the job was the same condition that caused or resulted in the covered employee's death.

64. In this case, there is no dispute that the condition that resulted in Deputy DeLeon's death was heart disease, not high blood pressure or hypertension. The undisputed evidence also established that hypertension and heart disease are two separate conditions and that the fact that a person has high blood pressure or hypertension is not evidence of or an indication that the person has heart disease.

65. In order to rebut the presumption, the Division must establish by competent evidence that the disease was caused by some other specific hazard or non-occupational hazard. The Division failed to provide any such evidence.

66. To rebut the presumption, the Division presented medical testimony that Deputy DeLeon's death was the result of a rhythm disturbance caused by the atherosclerosis, a pre-existing condition, and was not caused by or related to stress on his job as a deputy with the Sheriff's Office. Notwithstanding this assertion, the Division's medical expert testified that his

opinion was based on data that he reviewed. However, he acknowledged that he was provided no information which indicated Deputy DeLeon had experienced stress on his job with the Sheriff's Office in the days immediately prior to his death. Therefore, this evidence is not persuasive.

67. Contrary to the assertions of the Division, the evidence established that in the days prior to his death, Deputy DeLeon was under stress in connection with his job responsibilities as a deputy with the Sheriff's Office and that the pre-existing condition, atherosclerosis, was aggravated by the job-related stress.

68. The fact that the atherosclerosis was a pre-existing condition, does not eliminate the possibility of work-related aggravation causing the death or disability of a covered employee. See City of Temple Terrace v. Bailey, 481 So. 2d 49, 51 (Fla. 1st DCA 1985).

69. Considering the entire record in this case, the greater weight of the evidence established that Deputy DeLeon's pre-existing heart disease was aggravated by the job-related stress he experienced on the days prior to his death, and as a result thereof, he died. Thus, Petitioner is entitled to the presumption in Subsection 112.18(1), Florida Statutes (2003).

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED that Respondent, the Department of Management Services, Division of Retirement, issue a final order finding that Petitioner, Areani T. DeLeon, is qualified to receive "in line of duty" benefits.

DONE AND ENTERED this 23rd day of February, 2005, in Tallahassee, Leon County, Florida.

Carolyn S. Holifield

CAROLYN S. HOLIFIELD
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of February, 2005.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.