

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF JUDGES OF COMPENSATION CLAIMS  
FORT LAUDERDALE DISTRICT OFFICE**

**EMPLOYEE:**

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Hallandale, FL 33009

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**CARRIER:**

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Post Office Box 1549  
Tarpon Springs, FL 34688

**OJCC No:** 06-035571DAL

**D/A:** 10/13/2006

**JUDGE:** Daniel A. Lewis

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**FINAL EVIDENTIARY ORDER ON EMPLOYER/CARRIER'S MOTION FOR  
SANCTIONS AND MOTION TO TAX FEES AND COSTS**

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THIS CAUSE came on to be heard before the undersigned Judge of Compensation Claims on February 24, 2009 for an evidentiary hearing on the employer/carrier's Motion for Sanctions and Motion to Tax Fees and Costs. The employer/carrier's Motion for Sanctions was filed on May 1, 2008. However, on May 13, 2008, claimant filed a Notice of Appeal of my Order Dismissing All Pending Petitions for Benefits entered May 5, 2008, which divested me of jurisdiction to hear the employer/carrier's Motion for Sanctions until the appeal was determined. On January 5, 2009, the First District Court of Appeal issued its mandate, and this evidentiary hearing on the employer/carrier's Motion for Sanctions was held on February 24, 2009.

At this evidentiary hearing, live testimony was taken from counsel for the claimant and counsel for the employer/carrier, various documentary exhibits were introduced into evidence, including prior orders of the undersigned, and argument was presented. At this hearing, the parties also agreed to bifurcate the issues and try only the issue of whether any attorney's fees and costs are due to the employer/carrier pursuant to the applicable statute and rule. Jurisdiction shall be reserved over the issue of the amount of any fees and costs due for a later determination.

After careful consideration and review of the testimony, documentary evidence and argument presented, the following are my findings ultimate facts and conclusions of law:

1. The procedural history of this case is essentially contained in my Order Dismissing All Pending Petitions for Benefits entered on May 5, 2008, which order was the subject of the claimant's appeal filed on May 13, 2008. As recited in my May 5, 2008 Order, I found that I had previously entered a Final Compensation Order on November 7, 2007 determining that claimant's alleged injuries to his neck and back were not compensable, since claimant had failed to meet his burden of proof by presenting any medical evidence to support compensability, causation, or major contributing cause of any alleged medical conditions. By my November 7, 2007 Final Compensation Order, claimant's claims for various indemnity and medical benefits were denied and dismissed in their entirety. No appeal was taken of my November 7, 2007 Final Compensation Order.

2. In my May 5, 2008 Order Dismissing All Pending Petitions for Benefits, I also found claimant had filed another petition for benefits on January 10, 2008 again seeking

the same benefits previously adjudicated by my November 7, 2007 Final Compensation Order. I found the doctrine of res judicata to apply, as the compensability of all injuries allegedly related to claimant's accident was previously adjudicated and denied in my November 7, 2007 Final Compensation Order.

3. As indicated, claimant then filed his Notice of Appeal of my May 5, 2008 Order Dismissing All Pending Petitions for Benefits. On January 5, 2009, the First District Court of Appeal issued its mandate along with its opinion affirming, per curiam, my May 5, 2008 Order.

4. The employer/carrier seeks sanctions pursuant to section 440.32(1), Fla. Stat., and Florida Administrative Code Rule 60Q-6.125(2)(b) for attorney's fees and costs incurred following the claimant's refiling of the petition for benefits on January 10, 2008.<sup>1</sup> Section 440.32(1) provides that the cost of the proceedings shall be assessed against a party who has instituted or continued such proceedings without reasonable ground. Rule 60Q-6.125(2)(b) provides that sanctions, including the imposition of costs or attorney's fees, may be assessed against a party or attorney when the claims, defenses, and other legal contentions in a pleading or other document or in argument presented before the JCC are not warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of a new law.

5. Although claimant contends that there were reasonable grounds for the filing of the January 10, 2008 petition for benefits and that the claims were warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal

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<sup>1</sup> At this evidentiary hearing the employer/carrier indicated it was not requesting sanctions under section 440.32(2), Fla. Stat., which would have required me to forward a copy of this Order to the appropriate grievance committee acting under the jurisdiction of the Florida Supreme Court in the event a penalty was assessed under that subsection.

of existing law or the establishment of a new law, I disagree. Claimant's Response filed May 29, 2008 to the employer/carrier's Motion for Sanctions and Motion to Tax Fees and Costs stated as grounds that the statute of limitations had not run, and thus claimant had a right to refile his petition for benefits. However, the well established doctrine of res judicata bars a claimant from relitigating mature claims which have previously been decided. Boynton Landscape vs. Dickinson, 752 So.2d 1236 (Fla. 1st DCA 2000).

6. In his May 29, 2008 Response and at this evidentiary hearing, claimant also contended that his petition for benefits filed on January 10, 2008 attached "new medical evidence" from Dr. Moya which supported claimant's claims.<sup>2</sup> From this argument, it seems claimant desires not only to relitigate the issue of whether he sustained any compensable injuries from the accident but also to relitigate my May 5, 2008 Order Dismissing All Pending Petitions for Benefits, which Order was affirmed on appeal. Even assuming claimant had such "new medical evidence," which argument, it should be noted, was not raised at the time of the hearing which resulted in my May 5, 2008 Order Dismissing All Pending Petitions for Benefits, claimant's claim of causally related neck or back injuries may not be relitigated simply because claimant may have a greater or more favorable volume of evidence on this issue. U.S. Block Windows vs. Dixon, 943 So.2d 852 (Fla. 1st DCA 2006). See also: Hall vs. Seaboard Maritime Corp., 104 So.2d 384 (Fla. 1st DCA 1958).

7. The employer/carrier's Motion for Sanctions and Motion to Tax Fees and Costs shall be granted. I find attorney's fees to be due from claimant's counsel pursuant to Florida Administrative Code Rule 60Q-6.125(2)(b). I find costs to be due from the

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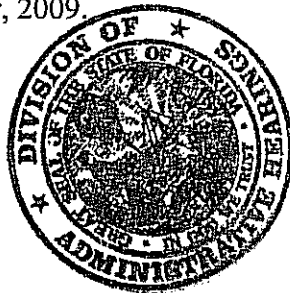
<sup>2</sup> There is nothing in Dr. Moya's medical records, which were attached to claimant's January 10, 2008 petition for benefits, which supports this contention.

claimant pursuant to section 440.32(1), Fla. Stat. Jurisdiction shall be reserved to determine the amount of the attorney's fees and costs due. As discussed at this evidentiary hearing, the determination of whether the employer/carrier is entitled to any attorney's fees or costs, and the amounts thereof, from the claimant or claimant's counsel for proceedings and time expended relating to the appeal shall be dealt with at a later hearing, since this issue may be one over which the Appellate Court has jurisdiction.

DONE AND ORDERED at Lauderdale Lakes, Broward County, Florida this

26<sup>th</sup>

day of February, 2009.



Honorable Daniel A. Lewis  
Judge of Compensation Claims

### CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true copy of the foregoing Final Evidentiary Order on Employer/Carrier's Motion for Sanctions and Motion to Tax Fees and Costs was furnished by U.S. mail this 26<sup>th</sup> day of February, 2009, to the aforementioned parties and their counsel of record.

  
Secretary to Judge of Compensation Claims