

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
MIAMI-DADE COUNTY DISTRICT**

EMPLOYEE:
Markel Chirino-Diaz
7424 Byron Avenue, Unit #5
Miami Beach, FL 33141

ATTORNEY FOR EMPLOYEE:
Richard B. Zaldivar, Esquire
2600 SW 3rd Ave., Ste. 300
Miami, FL 33129

EMPLOYER:
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Holiday, FL 34691

ATTORNEY FOR E/C:
Robert S. Gluckman, Esquire
1280 SW 36th Ave., Ste. 100
Pompano Beach, FL 33069

CARRIER/SERVICING AGENT:
Lion Insurance Company Serviced by:
Packard Claims Administration, Inc.
P.O. Box 1549
Tarpon Springs, FL 34688

OJCC No.: 08-029832SMS
D/A: 4/29/07
JCC: Sylvia Medina-Shore

FINAL EVIDENTIARY HEARING ORDER GRANTING E/C'S MOTION TO TAX COSTS

THIS CAUSE came before the undersigned Judge of Compensation Claims for a final evidentiary hearing on 5/7/10 regarding E/C's Motion to Tax Costs filed 3/24/10.

Documentary Exhibits:

E/C-

1. Motion to Tax Costs and attachments consisting of 1/28/10 Compensation Order, Affidavit in Support of Motion to Tax Costs, Costs Delineation, and Invoices.

Claimant-

1. Response to Motion to Tax Costs e-filed 4/12/10.

Findings of Fact and Conclusions of Law:

1. On 10/31/08, the claimant filed a petition for benefits (PFB) claiming TTD/TPD benefits, IME, mileage, alternate orthopedic for treatment, and penalties, interest, costs, and attorney's fees (PICA). A final hearing was scheduled to occur on 4/30/09 regarding same PFB.
2. On 4/29/09, claimant filed his voluntary dismissal of all pending PFBs. Accordingly, the 4/30/09 final hearing was cancelled.
3. On 9/10/09, claimant filed a PFB claimant alternate orthopedist for care. This PFB was scheduled for a Final Hearing which concluded on 1/25/10.
4. On 1/28/10, a Compensation Order was entered denying the claim for authorization of an alternate treating physician.
5. E/C seek reimbursement of costs as the prevailing party pursuant to §440.34(3) and the case of F.A. Richard & Assoc. v. Fernandez, 975 So. 2d 1224 (Fla. 1st DCA 2008).
6. The claimant argues that the sole PFB wherein E/C prevailed dealt with the 9/10/09 PFB. I reject claimant's argument. I find that E/C prevailed on the 9/10/09 PFB via the 1/28/10 Compensation Order and is considered the prevailing party due to claimant's 4/29/09 voluntary dismissal of the 10/31/08 PFB. See, Costco Wholesale Corp. v. Ulett, 995 So.2d 1016 (Fla. 1st DCA 2008).
7. Claimant further argues per F.S. 440.30 only allows the claimant (not E/C) to recover costs such as fees for depositions. While the undersigned is cognizant of F.S. 440.30, I find that same statute section does not conflict with F.S. 440.34(3). F.S. 440.30 deals with deposition fees being recovered by the claimant either pre-suit or post suit if the claimant prevails. F.S. 440.34(3) broadens the scope of costs reimbursement by indicating that "if

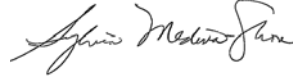
any party should prevail in *any proceedings* before a JCC or court, there shall be taxed against the non-prevailing party the *reasonable costs of such proceedings*, not to include attorney's fees.”

8. I find that F.S. 440.34(3) allows for the prevailing party--either the E/C or the claimant—to recover reasonable costs. Accordingly, E/C is correct in seeking costs pursuant to F.S. 440.34(3). Further, I find that F.S. 440.34(3) does not limit a prevailing party to solely recover non-deposition fee costs. F.S. 440.34(3) specifically indicates that “reasonable costs” shall be taxed against the prevailing party. To that extent, I find that 60Q-6.124(3)(e) mandates that a JCC consider the Statewide Uniform Guidelines of Taxation of Costs in Civil Actions when determining the reasonableness of an award of cost reimbursement.
9. In the present case, the claims voluntarily dismissed and adjudicated consisted of TTD/TPD benefits, IME, mileage, alternate orthopedic for treatment, and penalties, interest, costs, and attorney's fees (PICA).
10. The E/C seek costs of \$1,897.40. After carefully reviewing the costs, I find the following to be taxable costs against the claimant (non-prevailing party):
 - a. Court Reporter fees for the deposition of the Medical Records Custodian for Dr. Bruce Berkowitz taken January 20, 2010 in the amount of \$95.00.
 - b. Court Reporter fees for the deposition of Dr. Gary Kelman on January 21, 2010 in the amount of \$396.20.
 - c. Court Reporter fees for the deposition of Mary Merrill taken January 20, 2010 in the amount of \$467.60.
 - e. Pre-payment for the deposition of Dr. Warren Grossman in the amount of \$200.00.
 - f. Pre-payment for the deposition of Dr. Gary Kelman in the amount of \$200.00.
11. I find that E/C has logically demonstrated that the above costs were reasonable and necessary given the outstanding PFBs for various indemnity and medical benefits. Therefore, I conclude

that E/C is entitled to reimbursable costs of \$1,358.80 from the claimant.

WHEREFORE, IT IS ORDERED:

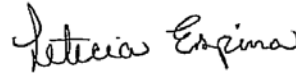
1. E/C's Motion to Tax Costs is granted in part.
2. Claimant shall reimburse E/C reasonable costs of \$1,358.80.



Sylvia Medina-Shore
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the instant Final Evidentiary Hearing Order on E/C's Motion to Tax Cost has been duly furnished by U. S. Mail to each of the parties at the addresses listed above and via e-mail to the attorneys of record this 12th day of May, 2010.



Secretary to JCC