

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
MIAMI DISTRICT OFFICE

Alexander Echevarria,
Employee/Claimant,

OJCC Case No. 11-022922WWA

vs.

Accident date: 7/18/2011

Southeast Personnel Leasing, Inc./Packard
Claims Administration,
Employer/Carrier/Servicing Agent.

Judge: Wilbur W. Anderson

**AMENDED EVIDENTIARY ORDER ON CONTESTED
MOTION FOR ATTORNEY FEES AND COSTS**

On my own motion, the Evidentiary Order on Contested Motion for Attorney Fees and Costs entered on March 29, 2016, is vacated and this amended order is substituted therefor.

1. Claimant's former* counsel filed a verified motion for attorney's fees and costs on January 7, 2016. The Employer/Carrier filed a verified response to the motion on January 28, 2016. An evidentiary hearing was scheduled for March 14, 2016, but on March 9, 2016, the parties filed a joint motion for ruling on the pleadings. I granted that motion on March 11, 2016. This order follows.

2. As agreed in a joint stipulation of the parties filed on February 23, 2016, the only issues to be determined are (1) whether Claimant's former counsel is entitled to a medical-only fee of \$1,500, or a reasonable hourly fee, and (2) the amount of taxable costs. The problem with the binary attorney fee choice presented by the parties' stipulation is that the law does not permit me to award a \$1,500 medical-only fee or an otherwise reasonable hourly fee.

* Counsel's motion to withdraw from representation of Claimant was granted by order entered on July 1, 2014.

3. As for a \$1,500 medical-only fee under section 440.34(7), section 440.34(3)(a) requires me to find Claimant's former counsel successfully asserted a petition for medical benefits only at a time when Claimant had not filed, and was not entitled to file, a claim for disability, permanent impairment, wage-loss, or death benefits arising out of the same accident. I am unable to make such a finding because there was a petition for temporary disability benefits filed on October 6, 2011, still pending when the petition for benefits seeking the medical benefits for which an attorney fee is sought was filed on December 2, 2011.

4. As for an otherwise reasonable hourly fee, I am bound by the opinion of the First District Court of Appeal in Castellanos v. Next Door Co., 124 So. 3d 392 (Fla. 1st DCA 2013). review granted, 145 So. 3d 822 (Fla. 2014). Unless the current version of section 440.34 is declared unconstitutional by the Florida Supreme Court, for this 2011 date of accident I have no authority to award an hourly fee exceeding a statutory percentage fee based on the value of benefits obtained.

5. The parties agreed to a number of other things in the joint stipulation filed on February 23, 2016, including: the total value of benefits secured by Claimant's former counsel is \$1,093; for this case only, \$350 is the agreed upon reasonable hourly rate for the legal services rendered by Claimant's former counsel; and Claimant's former counsel expended 20 hours in the successful prosecution of the benefits secured.

6. Given the stipulation that the total value of benefits secured is \$1,093, I am required by section 440.34(1) to award an attorney fee of \$218.60, although a reasonable fee would be substantially more based on the other stipulations.

7. Claimant's former counsel also seeks to tax \$219.98 in costs against the E/C. It is the burden of the party seeking to tax costs to show that all requested costs were reasonably

necessary to maintain the claim. I have considered the affidavit of costs and costs ledger attached to the verified fee motion, and the objections thereto stated in the verified response to the motion and in an exhibit attached to the verified response. I have also considered the stipulation of the parties that the E/C “will pay all taxable costs found to be related to benefits secured of obtaining Dr. Triana as the claimant’s one time change per the 12/2/11 PFB.” Having taken into account the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions and applicable case law, including Morris v. Dollar Tree Store, 869 So. 2d 704 (Fla. 1st DCA 2004), I conclude no costs are taxable. Under Section III(D) of the guidelines, attorney travel expenses, totaling \$66.98 in this case, are not taxable. In addition, postage costs of \$15.00 for “returning [unspecified] documents to client” and generic “copy charges” of \$138.00 are too vague to be taxable.

It is therefore,

ORDERED AND ADJUDGED that the Employer/Carrier shall pay Claimant’s former counsel an attorney’s fee of \$218.60. No costs are taxed.

DONE AND ELECTRONICALLY TRANSMITTED VIA EMAIL TO THE ATTORNEYS AND CARRIER LISTED BELOW this 31st day of March, 2016, in Daytona Beach, Volusia County, Florida



Wilbur W. Anderson
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