

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

Carlos Borrego,
Employee/Claimant,

vs.

Judge: Stephen L. Rosen

J & K Boring and Welding Services, Inc.,
Employer,

OJCC Case No. 13-010675DSR

Tower Group Companies,
Carrier/Servicing Agent.

Accident date: 4/19/2013

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EVIDENTIARY ORDER ON MULTIPLE MOTIONS

This Cause came on for hearing before the undersigned Judge of Compensation Claims on September 17, 2013 through the video teleconference system with the parties in Miami and the undersigned in St. Petersburg. The subjects of the motions were rehearing of the employer/carrier's motion for protective order, motion for continuance, and emergency motion to compel claimant's deposition. A motion for in camera inspection was held in abeyance. Salvatore J. Sicuso, Esq. was present on behalf of the Claimant and Andrew R. Borah, Esq. was present behalf of the Employer/Carrier.

Exhibits:

By agreement of the parties and to supply a complete record for any appellate purposes, all electronically filed documents in case number 13 – 010675, beginning with the petition for benefits filed May 9, 2013 and ending with the notice of filing case law on September 17, 2013, are admitted into evidence for purpose of these multiple motions and made part of the record.

After hearing arguments of the parties and otherwise being fully apprised of the facts and applicable law herein, I find that:

1. I have jurisdiction of the subject matter and the parties for this motion.
2. By way of history, this case is assigned to the Hon. Donna S. Remsnyder in the Melbourne/Sebastian district. In the absence of Judge Remsnyder in August 2013, the undersigned heard the employer/carrier's motion for protective order regarding the claimant's attempts to set the deposition of the adjuster, whose office is located in Maitland, Florida as listed in all of the pleadings, in Miami. The undersigned did take, and will continue to take, judicial notice that this is a distance of approximately 250 miles.
3. The claimant then filed a motion to vacate and rehear that protective order and, in an abundance of caution because of time frames, Judge Remsnyder entered an order on September 4, 2013 vacating the order granting the motion for protective order without detail.
4. In this motion for rehearing on the protective order, claimant argues that he is entitled to have a face-to-face discovery deposition between the adjuster, the claimant, and the claimant's attorney in Miami where the accident occurred. Claimant cites cases and/or rules of procedure in support of this position. Claimant further states that because of defenses regarding fraud and total denial of the claim, the claims adjuster should make a personal appearance in Miami to support decisions made in the defense of this claim.
5. However, no allegations or evidence of fraud, harassment, or avoidance of process are provided the undersigned. The claims adjuster in the instant case is merely an employee of the carrier and is not alleged to have any personal interest in the outcome of this claim. There is no allegation posed by the employer/carrier that this adjuster will not appear for a properly scheduled and noticed deposition. I do not find that extraordinary circumstances exist that would warrant a witness to travel 250 miles each way for a discovery deposition. I find that it is unduly burdensome for the claims adjuster to travel from Maitland, Florida to Miami, Florida for a discovery deposition. The adjuster shall make herself present for an in-person deposition in the

Maitland/Orlando, Florida area. But, the adjuster shall not be compelled to travel to Miami for a discovery deposition.

6. The employer/carrier moves for an emergency order compelling the deposition of the claimant. Argument of the parties, as well as the pleadings that are in evidence, show that the claimant, by and through his attorney, has not given deposition testimony pending a ruling on the protective order for the adjuster traveling to Miami.

At the outset, the undersigned advised the two excellent, experienced attorneys for the respective parties that they should not lose sight, through legal wrangling, of the objective of the Florida Workers' Compensation Law: to swiftly determine the rights and responsibilities of the parties.

With that in mind, it is ordered that the depositions of the claimant and the claims adjuster should be completed within 35 days from the date of this order on September 17, 2013. The claimant shall be allowed to take the deposition of the adjuster first in time and the employer/carrier shall be allowed to take the deposition of the claimant thereafter. If these 2 depositions are not completed in the 35 day time period (unless an appeal is filed), the parties may be subject to sanctions which may include dismissing pending petitions and/or striking defenses.

7. Finally, because the undersigned finds that, through the application of logic and reason and over the objection of the attorney for the claimant, the parties will be unable to prepare their claims and defenses with admissible evidence by the time the final hearing is currently scheduled for October 22, 2013. Therefore, that hearing is continued. The parties are ordered to reschedule the final hearing within 210 days after May 9, 2013.

8. With regard to the motion for in-camera inspection, both parties raise interesting points. The employer/carrier suggests that a Judge of Compensation Claims, who is not assigned the case, perform the in-camera inspection to determine what is discoverable. The claimant, on the other hand, argues that the Judge of Compensation Claims who is assigned the case should perform the in-camera inspection to determine what that Judge will allow to be discovered and/or admitted into evidence. Therefore, that motion will be held in abeyance until such time as the judge who is

assigned to this case, Judge Remsnyder, can entertain and rule on the performance of the in-camera inspection.

WHEREFORE, IT IS ORDERED THAT:

1. Motion for protective order is **GRANTED** only so far as to protect the adjuster from traveling to Miami to give a discovery deposition.
2. The adjuster will be deposed first in time, and the depositions of the adjuster and the claimant shall be completed within 35 days from the date of this order.
3. The hearing currently scheduled for October 22, 2013 is continued and shall be rescheduled by the parties no later than 210 days from May 9, 2013.

DONE AND MAILED this 18th day of September, 2013, in St. Petersburg, Pinellas County, Florida.



**Stephen L
Rosen**

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