

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

EMPLOYEE:

Olania Collado
13801 S. Biscayne River Dr.
Miami, Florida 33161

ATTORNEY FOR EMPLOYEE:

Elvis J. Adan, Esq.
EmLaw, LLC
66 West Flagler Street, Ste. 1002
Miami, Florida 33130

EMPLOYER:

50 Eggs, Inc.
2415 Ponce De Leon Blvd
Coral Gables, Florida 33134

ATTORNEY FOR EMPLOYER/CARRIER:

Andrew R. Borah, Esq.
Hurley, Rogner, Miller, Cox, Waranch
& Westcott, P.A.
1280 SW 36th Avenue, Suite 100
Pompano Beach, Florida 33069

CARRIER:

AmTrust North America
PO Box 310719
Boca Raton, Florida 33431

OJCC NO.: 13-029313CMH

D/A: 11-23-13

Judge: Charles M. Hill, III

FINAL EVIDENTIARY ORDER

THIS MATTER came before me on April 28, 2014 as a specially set evidentiary hearing upon the E/C motion for sanctions dated Feb. 11, 2014 (filed on March 5, 2014) seeking sanction imposition against the claimant's attorney, Elvis Adan, Esq. (Adan), for having filed a frivolous PFB on 2/5/14 and otherwise having not exercised a good faith effort prior thereto to resolve the matter. This particular motion is bottomed upon Fla. Admin. Code R. 60Q-6.125(2)(a) & (2)(c) and shall be referred to as Motion #1. Two additional motions were entertained at this hearing, with the initial consent of the parties, which sought enforcement of two outstanding discovery orders under the auspices of Rule 60Q-6.114(5). Those latter motions were filed on April 3, 2014 and April 23, 2014 addressing discovery orders issued 2/27/14 and 3/26/14, respectively. They shall be referred to as Motions #2 & #3.

Documentation was marked and admitted into evidence without objection. It was understood that the admitted items were for purposes of this hearing only and that current admission alone would not assure later admission at any future hearing. An appendix thereof is attached. The undersigned has included prior order entries in this cause reflecting earlier sanction imposition to provide some historical context. Andrew Borah, Esq. (Borah) and Adan personally testified. The adjuster's, Vivian Cervia's, telephonic appearance was excused, the parties having agreed that the effective dates within and documentation attached to Motion #1 filed 3/5/14 are accurate and authentic, that the events reflected therein took place as represented and that neither the claimant nor Adan made a good faith effort with the E/C or their counsel to resolve the alleged medical dispute prior to filing the 2/5/14 PFB.

AFTER DUE CONSIDERATION given to the evidence admitted and argument of counsel the following findings of ultimate fact and conclusions of law shall be applicable.

1. Background. A mediation conference was duly scheduled by the court to take place on 2/27/14. Both the claimant and Adan failed to appear. An order to show cause was issued on that day seeking an explanation for this failure. No explanation was forthcoming, thus an order was issued on 3/12/14 striking the two PFBs then pending without prejudice as a sanction. Prior to this dismissal however, Motion #1 seeking sanctions under Rule 60Q-6.125(2)(a) & (2)(c) had been filed by the E/C. Motions #2 & #3 were filed on 4/3/14 and 4/23/14 and involved separate and distinct discovery issues. As such, they were not dependent upon PFB submission, albeit another PFB was filed on 3/19/14.

2. Motion for sanctions #1 dated Feb. 11, 2014 (filed March 5, 2014). Adan as above noted had no dispute with the accuracy of the dates and truthfulness of the events outlined in this motion. He testified that he had claimants sign PFBs in blank and in advance, so that in

situations when he was unable to communicate with them, he could act swiftly to file for benefits on their behalf. In this instance, he had found a script on his desk (which may have been there a couple of weeks) for a neurological consult authored several weeks earlier and to his belief, may not have been honored by the E/C. Because he was unable to communicate with his client, the subject PFB was filed without any coordination with her and without any effort by him to resolve the dispute in advance with the E/C or their attorney. The stark reality however, was that the E/C had indeed honored the script of 12/20/13, had set up an appointment with a neurologist, Dr. Bernard Gran, for 1/27/14 and the claimant had punctually attended the office visit. All of this occurred prior to Adan's execution and filing of the 2/5/14 PFB seeking the subject neurological consult.

Motion #1 was served upon Adan 2/11/14 and sought correction of that errant and defective PFB submission. No acknowledgment, correction or other response was forthcoming from Adan within 21 days of the motion's service. Thus, on 3/5/14 Motion #1 became actionable. The subsequent PFB dismissal by the court on 3/12/14 on other grounds cannot serve in this instance to vitiate the duly filed Motion # 1 seeking to address and dissuade sanctionable behavior.

Based upon the foregoing, I find: that Motion #1 was served after due and proper notice was provided Adan in accord with Rule 60Q-6.125(4)(a); that contrary to Adan's affirmation contained in the 2/5/14 PFB certificate of good faith, there was in fact no attempt to resolve the dispute with the E/C as required by F.S. 440.192(4); that such a falsehood within the certificate led to needless costs of litigation borne by the E/C; that Adan volitionally petitioned the OJCC for an order compelling the E/C to provide a neurological consult, which claim was meritless and would never have had any evidentiary support as the consult had already been provided; that this

action by Adan was wanton and made in reckless disregard of his duties to acquire sufficient knowledge through reasonable inquiry the 2/5/14 PFB was well grounded in fact; and, that the PFB submission led again to needless costs of litigation borne by the E/C.

The actions by Adan are sufficiently reprehensible and demeaning to the profession to warrant monetary sanction. Considering the defensive requirements to retain legal counsel to defend the PFB and to prosecute Motion #1, I find that \$1,500.00 represents a reasonable sum to address this sanctionable conduct and is sufficient to deter its repetition. Motion #1 is granted in these particulars.

3. Motion #2 for sanctions dated March 27, 2014. This motion seeks an appropriate sanction to enforce claimant's compliance with the 2/27/14 discovery order directing execution and return of customary social security and unemployment compensation release forms. As of 4/28/14 no extension of time had been requested (filed) or excuse tendered by claimant affidavit or otherwise. The colloquy before the court involved Adan affixing blame onto the claimant due to her transportation problems. Adan had no explanation why a self-addressed stamped envelope would not have provided the signed releases for their ultimate delivery to the E/C. A monetary sanction against the claimant herself is not appropriate in this instance, particularly given the alleged breakdown in communication and the apparent lack of legal management over the issues at hand. For this reason, the pending PFB submission on 3/19/14 shall be dismissed without prejudice as a sanction under Rule 60Q-6.114(5) in order to provide the claimant and her attorney the time they need to establish effective communication with each other and to better appreciate the need to comply with customary discovery orders. Motion #2 is granted in these particulars.

4. Motion #3 for sanctions dated April 22, 2014. This motion seeks an appropriate sanction to enforce claimant's compliance with the 3/26/14 discovery order directing a response in good faith to the RTP served 1/10/14. As of 4/28/14 no extension of time had been requested (filed) or excuse tendered by claimant affidavit or otherwise. Again, the colloquy before the court involved Adan affixing blame onto the claimant. But in addition, Adan asserted insufficient notice of this hearing regarding Motion #3, despite the earlier acknowledgement all motions were to be resolved at this setting. Therefore, in deference to the assertion, Motion #3 is denied without prejudice, and may be re-noticed by the E/C should the relief afforded herein be thought insufficient.

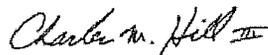
WHEREFORE premises considered, it is

ADJUDGED that:

5. Elvis Adan, Esq. is directed to pay to the E/C forthwith the sum of \$1,500.00 as and for a sanction in this cause.

6. The PFB filed on 3/19/14 is hereby dismissed without prejudice.

ORDERED in Chambers this 28th day of May, 2014.



Charles M. Hill, III
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been emailed to counsel this 28th day of May, 2014.



Secretary to Judge of Compensation Claims

Appendix

E/C exhibits:

1. Motion for sanctions dated February 11, 2014 (filed March 5, 2014) with attachments, PFB dated 2/5/14, neurology referral 12/20/13, carrier letter to claimant dated 1/15/14, progress note by Dr. Gran (neurology) dated 1/27/14 and defense letter to Elvis Adan, Esq dated 2/11/14 marked E/C composite exhibit (1).
2. Motion for sanctions for failure to comply with discovery order of 2/27/14 dated March 27, 2014 (filed April 3, 2014) with attachments, defense letter to Elvis Adan, Esq dated 3/14/14, order on motion to compel execution of release forms issued 2/27/14 and defense letter to Elvis Adan, Esq dated 3/27/14 marked E/C composite exhibit (2).
3. Motion for sanctions for failure to comply with discovery order of 3/26/2014 dated April 22, 2014 (filed April 23, 2014) with attachment, order on E/C's motion for rehearing issued 3/26/14 marked E/C composite exhibit (3).

Judicial exhibit:

1. Order to show cause for failure to attend mediation conference issued 2/27/14, order issued 3/12/14 and preliminary order on E/C's motion for sanctions issued 3/26/14 marked Judge's composite exhibit (1).