

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FT. MYERS DISTRICT OFFICE

Maria Isabel Delgado,
Employee/Claimant,

vs.

OJCC Case No. 12-001094KAS

Westree Financial, Inc. d/b/a Westree
Marina/Gallagher Bassett Services, Inc.,
Employer/Carrier/Service Agent.

Accident date: 11/9/2011

ORDER ON EMPLOYER/CARRIER'S AMENDED VERIFIED MOTION TO TAX COSTS

THIS CAUSE came before the undersigned for an evidentiary hearing on November 7, 2013 on Employer/Carrier ("E/C")'s Amended Verified Motion to Tax Costs filed September 27, 2013. Claimant filed her response to said Motion on October 8, 2013 and the parties were requested to coordinate an evidentiary hearing. The November 7, 2013 hearing was held by video teleconference between the Miami and Fort Myers District Offices of OJCC. Claimant was represented at the hearing by William Haro, Esquire, and E/C was represented by Andrew Borah, Esquire.

E/C offered into evidence its Amended Verified Motion to Tax Costs. Claimant objected to the exhibits attached thereto as unauthenticated hearsay. The exhibits were referenced in the verified motion and attested to by both Counsel for E/C and the adjuster, Nehemie Legrand, who testified by telephone. The exhibits were received into evidence over Claimant's objection.

Claimant's Verified Response to Motion to Tax Costs was received into evidence without objection.

After consideration of the evidence and arguments of counsel the following findings and conclusions are made:

1. It is undisputed E/C was the prevailing party at the final merits hearing held February 21, 2013 pursuant to the Final Compensation Order entered March 25, 2013.
2. Pursuant to Section 44 0.34 (3), when any party prevails in a proceeding before a judge of compensation claims, there shall be taxed against the non-prevailing party the reasonable costs of such proceedings, excluding attorney's fees.

3. Pursuant to 60Q-6-124 (3) (a) a motion for costs shall be verified and filed and shall include a detailed list of all taxable costs advanced or incurred. 60Q-6.124 (3) (e) requires the judge of compensation claims to consider the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions in determining the reasonable of an award of cost reimbursement.
4. Claimant contested specific costs in her Verified Response to the Verified Motion for Costs. Based on the evidence at the motion hearing, all the costs sought by E/C are found to be reasonable and reimbursable except for the following:
 - a. The \$215.00 for pre-deposition conference with Dr. Lang. This charge is reduced to \$ 50.00 pursuant to Section 440.13 (10) which limits the amount a health care provider witness giving a deposition may charge to \$ 200.00 per hour. The conference in question was undisputedly related to the physician's deposition testimony. The invoice from Dr. Lang indicates a rate of \$ 215.00 for a 15 minute conference. E/C agreed to the adjustment to \$50.00 for the 15 minute conference.
 - b. The personal travel cost charges by E/C's attorneys are disallowed as being non-taxable costs, so \$ 23.31, \$42.21, \$ 60.29 and \$ 43.88 are subtracted from the costs to be reimbursed.
 - c. Also subtracted from the cost listing are the charges for delivery fees and handling from the court reporters of \$ 24.95, \$ 24.95 for the two Claimant depositions; and \$ 39.95 for Dr. Lang's deposition, as those fees were not justified as reasonable and necessary given Claimant's reasonable objection to same.
5. Claimant shall reimburse E/C \$ 2,134.50 in taxable costs.
6. Claimant's Verified Response avers Claimant does not have the resources to pay the costs. No findings are made regarding Claimant's ability or inability to pay the costs, only the quantum of costs E/C is entitled to receive from Claimant.

IT IS ORDERED AND ADJUDGED that E/C is entitled to receive \$ 2,134.50 in prevailing party costs from Claimant.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida.



A handwritten signature in black ink, appearing to be "Kathy A. Sturgis", is written over a solid horizontal line.

Kathy A. Sturgis, Judge of Compensation Claims

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY the foregoing Order was entered and a true copy furnished by e-mail to attorneys of record, at the e-mail addresses posted on the DOAH Website, on this the 6th day of December, 2013.



Clerk to Kathy Sturgis, Judge of Compensation Claims

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