

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

Pavel Chipi Gattorno,	)	
	)	
Employee/Claimant,	)	Judge Gerardo Castiello
	)	
vs.	)	OJCC Case No. 10-009340GCC
	)	
Alpha Staff Group, Inc.,	)	Accident date: 2/1/2010
	)	
Employer,	)	
	)	
and	)	
	)	
Tower Group Company,	)	
	)	
Carrier/Servicing Agent.	)	
_____	)	

**ABBREVIATED FINAL ORDER ON EMPLOYER/CARRIER'S  
MOTION TO TAX COSTS**

**(I) PROCEDURAL HISTORY:**

This matter has come before the undersigned Judge of Compensation Claims for resolution and adjudication of an attorney's costs dispute wherein Employer/Carrier seeks to have their costs paid by the Employee/Claimant. Claimant Pavel Chipi Gattorno was represented by William Haro, Esq. of the Law Offices of Richard Zaldivar, P.A. Employer, Alpha Staff Group, Inc., and carrier Tower Group Company (collectively hereinafter: e/c) were represented by Matthew Troy, Esq. of Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A.

This decision is being issued in Abbreviated Final Order (hereinafter: AFO) form. See F.S. 440.25(4)(d). This Order is not intended to be appealable. Should either party wish to pursue an appeal, an appealable detailed Order containing findings of fact and conclusions of law must be requested within 10 days of this Order's entry. See, Rule 60Q-6.119; *General Motors v. Lynch*, 829 So. 2d 987 (Fla. 1st DCA 2002); Fla. R. App. P. 9.180(b)(2). This Order follows.

**(II) EVIDENCE PRESENTED:**

1. Employer/Carrier's October 7, 2011 Verified Motion to Tax Costs with accompanying October 7, 2011 affidavit from Matthew Troy, Esquire. .

2. Claimant's December 21, 2011 Response to E/C Motion to Tax Costs.
3. Employer/Carrier's December 23, 2011 Amended Verified Motion to Tax Costs with accompanying Amended Affidavit in Support of Motion to Tax Costs..
4. Claimant's January 9, 2012 Response to E/C Motion to Tax Costs.
5. Uniform Pretrial Stipulation entered January 12, 2012 on Employer/Carrier's Motion To Tax Costs.
6. Claimant's September 14, 2011 Voluntary Dismissal.
7. October 19, 2010 Notice of Voluntary Dismissal.

### **(III) FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Because this is an Abbreviated Final Order, the detailed findings of fact and conclusions of law typically associated with an adjudicatory Order are not present.

1. The Employer/Carrier bears the burden of proving (1) entitlement to taxable costs sought and (2) the quantum of same. See, *Kraft Dairy Group v. Sorge*, 634 So. 2d 720 (Fla. 1st DCA 1994).

2. Chapter 440 of Florida Statutes, Florida's Workers' Compensation Act has its origins in the Longshore and Harbor Workers' Compensation Act. This is evidenced explicitly in many ways. For example: many provisions from these two respective adjudicatory systems are to this day word for word verbatim copies of each other. For example: Section 440.29(1), Fla. Stat. (2008) allows a JCC to "make such investigation or inquiry, or conduct such hearing, in such manner as to best ascertain the rights of the parties." 20 C.F.R. 702.339 gives Administrative Law Judges (hereinafter: ALJ) adjudicating workers' compensation claims under the Longshore and Harbor Workers Compensation Act (LHWCA) authority to "make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties." See, *Smiley v. Navy Resale and Services Support Office*, 984 F. 2d 278, 283 (9th Cir. 1993); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989). The language from 20 C.F.R. 702.339 is word for word identical to Section 440.29(1), Fla. Stat. (2008).

3. Similarly, case law interpretations consistent with the principles articulated above have recognized that Chapter 440 and the Longshore and Harbor Workers Compensation Act (LHWCA) are conceptually parallel. In *Winn-Dixie Stores v. La Torre*, 702 So. 2d 1267 (Fla. 1st DCA 1997), the First District Court of Appeal looked for guidance to the definition of disability propounded by the U.S. Supreme Court in *Metropolitan Stevedore Co. v. Rambo*, 117 S.Ct. 1953, (1997), a Longshore and Harbor Workers' Compensation Act (LHWCA) case.

4. Where Florida rules are modeled after federal rules, great deference should be given to authorities interpreting the federal precedents. See, *Gleneagle Ship Management v. Leondakos*, 602 So. 2d 1282, 1283-1284 (Fla. 1992); *Zuberbuhler v. Division of Admin.*, 344 So. 2d 1304, 1306 (Fla. 2nd DCA 1977) similarly, where our legislature adopts statutes from another jurisdiction, it is appropriate to adopt that jurisdiction's judicial construction of said statute. See, *State v. Aiuppa*, 298 So. 2d 391, 394 (Fla. 1974); *Flammer v. Patton*, 245 So. 2d 854, 858-859 (Fla. 1971)

5. In both LHWCA attorneys fee and/or cost adjudications and in fee and/or cost disputes presented for adjudication under Chapter 440, affidavits are submitted and timely responses are due. See, 20C.F.R. 702.132(a); Rule 60Q-6.124 (3)(a); Rule 60Q-6.124(3)(b). Under the Florida model, a party's failure to respond to a Verified Petition within thirty (30) days results in the assertions made by the opponent in the verified petition being deemed admitted. See Rule 60Q-6.124(3)(b) In LHWCA litigation, the E/C only have ten (10) days to respond. See 20 C.F.R. 802.203(g) Both systems provide for adjudication without hearing. See, 20C.F.R. 702.132(a); Rule 60Q-6.115(4); Rule 60Q-6.124(3) (b). Under the LHWCA, adjudication of attorney's fees and costs is always achieved without hearing. See, 33 U.S.C. 928, 20 C.F.R. 702.132(a) Under Chapter 440, fee hearings are required where facts remain in dispute.

6. Recognizing the link between the adjudication of attorneys fee matters under LHWCA and how attorneys fees and costs are prosecuted under Chapter 440, the unchallenged facts presented herein via the employer/carrier's December 23, 2011 verified pleading are deemed admitted. See, Rule 60Q-6.115(4); 60Q-6.124(3) (b).

7. Specifically, the E/C filed an Amended Verified Motion to Tax Costs on December 23, 2011, wherein they claimed \$1,492.15 in costs. This figure was significantly reduced from the \$2,933.61 figure claimed in their October 7, 2011 Verified Motion to Tax Costs.

8. In the claimant's January 9, 2012 Response to the E/C Motion to Tax Costs, claimant identified two specific costs for challenge: the \$250.00 cost of the 7/7/11 conference with Dr. Kelman and the \$250.00 cost for the 8/1/11 conference with the same doctor. The claimant did not challenge any other costs. Accordingly, the facts raised in the E/C's verified motion are unchallenged with respect to the remaining \$992.15 in costs claimed. These are deemed admitted.

9. However, claimant's challenges to the two (2) \$250.00 conferences are meritorious. The E/C conceded as much at the March 5, 2012 evidentiary hearing.

10. A verified petition is competent evidence upon which the trier of fact may rely to support adjudication. See, *Verkruysse v. Florida Carpenters Regional Council*, 27 So. 3d 157 (Fla. 1<sup>st</sup> DCA 2010); *Hillsborough County Sheriff's Office v. Hilsman*, 23 So. 3d 743 (Fla. 1<sup>st</sup> DCA 2009). Accordingly, those unchallenged facts and the ultimate conclusions stated in the December 23, 2011 Verified Petition are expressly incorporated herein by reference into this Order. They are adopted as the undersigned's findings of fact herein. However, the \$500.00 costs challenged are found not to be taxable as a matter of law.

**(IV) DECREE:**

It is hereby Ordered that:

(1) Claimant Pavel Gattorno shall pay to the employer/carrier \$992.15 (nine-hundred ninety-two and 15/100 dollars) in full and complete satisfaction of any and all taxable costs incurred to date.

(2) Judicial notice is formally taken of the OJCC file in this cause - including those documents identified herein at II, 1 - 7 above.

Done and Ordered in chambers in Miami, Miami-Dade County, Florida this 5th day of March, 2012.

A handwritten signature in black ink, appearing to read "Gerardo Castiello", written in a cursive style.

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Gerardo Castiello  
Judge of Compensation Claims

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Abbreviated Final Order E/C's Motion to Tax Costs has been electronically mailed to each of the parties listed below this 5th day of March, 2012.

**Pavel Chipi Gattorno**  
2326 Northwest 23 Court  
Miami, Florida 33142

**Alpha Staff Group, Inc.**  
800 Corporate Dr., Ste. 600  
Fort Lauderdale, Florida 33334

**Tower Group Company**  
P.O. Box 948154  
Maitland, Florida 32794

I HEREBY CERTIFY that a true and correct copy of the foregoing Abbreviated Final Order on E/C's Motion to Tax Costs has been mailed to each of the parties listed below via U.S. mail this 5th day of March, 2012 to:

**William Haro, Esquire**  
The Law Offices of Richard E. Zaldivar,  
P.A.  
williamharo@hotmail.com  
zaldivarpa@gmail.com

**Matthew Troy, Esquire**  
Hurley, Rogner, Miller, Cox, Waranch  
& Westcott, P.A.  
zzevallos@hrmcw.com  
sfournier@hrmcw.com



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Secretary to Judge of Compensation Claims

Final Hearing Statistics Worksheet

Please complete this form at the time of Order upload for any of the following:

- Evidentiary Motion Hearing
- Expedited Final Hearing
- \*\*\*\* Fee Amount Hearing \*\*\*\*
- Fee Entitlement Hearing
- Final Hearing
- Fund Hearing
- Remand Hearing
- Appellate Fee Hearing

OJCC Number(s) 10-009340GCC

Date Order Mailed/Emailed 03/05/2012

Trial/Hearing dates opened 03/05/2012, concluded 03/05/2012

For Final Hearing or Expedited Final Hearing:

Dates of all pending petitions heard \_\_\_\_\_

OR

For Evidentiary Motion Hearing:

Type of Motion \_\_\_\_\_

Filing Date of Motion Heard \_\_\_\_\_

OR

For Fee Amount Hearing or Fee Entitlement Hearing

Date motion or verified petition filed 10/07/2012

OR

For Appellate Fee or Remand Hearing

Date of Mandate \_\_\_\_\_

AND

If abbreviated final/fee order was issued and later vacated:

Date Abbreviated Order Entered: \_\_\_\_\_

Date Abbreviated Order Vacated: \_\_\_\_\_