

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

Reynaldo Gutierrez,
Employee/Claimant,

OJCC Case No. 16-017209WJH

vs.

Accident date: 6/23/2016

Preferred Bldg Svc/United States Fire
Insurance Company,
Employer/Carrier/Servicing Agent.

Judge: Walter J. Havers

_____ /

FINAL ORDER DENYING ENTITLEMENT TO E/C PAID ATTORNEY'S FEES AND COSTS

THIS CAUSE came before the undersigned Judge of Compensation Claims on October 20, 2017 for a hearing on the Claimant's Verified Motion for Attorney's Fees and Costs filed on July 3, 2017. The E/C filed a Verified Response to Claimant's Verified Motion for Attorney's Fees and Costs on July 26, 2017. Attorney Monica De Feria Cooper appeared on behalf of the Claimant. Attorney Andrew Borah appeared on behalf of the Employer/Carrier (E/C).

TESTIMONY:

1. Eunice Hoyt

DOCUMENTARY EVIDENCE:

Joint:

1. Uniform Pretrial Stipulation & Pretrial Compliance Questionnaire filed on October 6, 2017 (DE 34).

Claimant:

1. Verified Motion for Attorney's Fees and Costs with attachments filed on July 3, 2017 (DE 27).

E/C:

1. Employer/Carrier's Verified Response to Claimant's Verified Motion for Attorney's Fees and Costs filed on July 26, 2017 (DE 28).
2. Notice of Voluntary Dismissal filed on December 19, 2016 (DE 21).
3. Employer/Carrier's Notice of Filing Payout Ledger with Check Numbers filed on October 19, 2017 (DE 35).

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. In my determination herein I have attempted to distill all the testimony and salient facts together with the findings and conclusions necessary to resolve this matter. I have not necessarily attempted to summarize the substance of the testimony of any witness, nor have I attempted to state nonessential facts. Because I have not done so should not be construed that I have failed to consider all of the evidence.
2. On March 8, 2017, the E/C filed a motion to compel the Claimant's counsel to file a verified motion for the attorney's fees and costs claimed in the Petitions for Benefits filed on July 19, 2016 and October 11, 2016. The motion was granted on March 28, 2017.
3. The verified motion seeks attorney's fees and costs emanating only from some of the claims for benefits in the Petition for Benefits filed on July 19, 2016. Any other claims for attorney's fees and costs emanating from the July 19, 2016 and October 11, 2016 Petitions for Benefits are considered abandoned. *Betancourt v. Sears Roebuck & Co.*, 693 So.2d 680, 684 (Fla. 1st DCA 1997).
4. The basis for the attorney's fees and costs claimed in the verified motion are the claims in the July 19, 2016 Petition for Benefits for payment of temporary total disability from the date of accident and continuing; payment of temporary partial disability from the date of

accident and continuing; and authorization and payment of medical care received at Coral Gables Hospital.

5. The claim for attorney's fees and costs related to authorization and payment of medical care received at Coral Gables Hospital was withdrawn at the time of the hearing.
6. The only basis for the claim of attorney's fees and costs remaining is counsel's alleged securing of past due indemnity benefits for the periods of July 18, 2016 through July 31, 2016; August 15, 2016 through August 28, 2016; September 12, 2016 through September 25, 2016; and October 1, 2016 through October 23, 2016. The Claimant also contends that the four checks were issued late.
7. On July 29, 2016, the E/C began issuing indemnity benefit checks, which was ten days after the filing of the July 19, 2016 Petition for Benefits.
8. More significantly, the E/C stopped payment on all of the checks for the aforementioned periods of time before the checks were cashed. The four checks were not reissued. The E/C contends that indemnity benefits are not due for those periods of time because the Claimant earned more than eighty percent of his average weekly wage for those periods of time.
9. Whether the Claimant is entitled to indemnity benefits for those periods of time is not before the undersigned. The checks for those periods of time were canceled before they were cashed. Therefore, indemnity benefits for those periods of time were not secured.
10. The Claimant asserts that attorney's fees and costs are due from the E/C because the checks for those periods of time were issued untimely. However, the Claimant's attorney did not secure penalties or interest. The payout does not reflect payment of penalties or interest.

WHEREFORE, IT IS ORDERED:

1. The Claimant's attorney is not entitled to the E/C paid attorney's fees and costs claimed in the Petitions for Benefits filed on July 19, 2016 and October 11, 2016.

DONE AND SERVED this 31st day of October, 2017, in Miami, Dade County, Florida.



Walter J. Havers
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Miami District Office
401 Northwest 2nd Avenue, Suite N-918
Miami, Florida 33128-3902
(305)377-5413
www.fljcc.org

COPIES FURNISHED:

United States Fire Insurance Company
1035 Greenwood Blvd Suite 265
Lake Mary, FL 32746
OLCMAIL-IR@cfins.com,

Monica De Feria Cooper, Attorney
Richard E. Zaldivar, P.A.
2600 S.W. 3rd Ave, Suite 900
Miami, FL 33129
mcooper@zaldivarpa.com,zaldivarpa@gmail.com

Andrew R. Borah, Esquire
Hurley, Rogner, Miller, Cox, & Waranch, P.A.
700 W. Hillsboro Blvd., Suite #2-107
Deerfield Beach, FL 33441
aborah@hrmcw.com,awalker@hrmcw.com