

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

Angela Latson,	)	
	)	
Employee/Claimant,	)	
	)	
vs.	)	OJCC Case No. 09-022659PTT
	)	
Medical Revenue Service,	)	Accident date: 3/12/2009
	)	
Employer,	)	Judge: Paul T. Terlizzese
	)	
and	)	
	)	
Crum & Forster,	)	
	)	
Carrier/Servicing Agent.	)	
_____	)	

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

THIS CAUSE came to be heard on the Employer/Carrier's Verified Motion to Tax Costs, served on May 17, 2011, and electronically filed on May 17, 2011. The Evidentiary Hearing was held and concluded on July 14, 2011. Attorney Matthew Troy appeared on behalf of the Employer/Carrier. The Employee/Claimant was represented by Attorney Joyce Hagen at the July 14, 2011 proceedings.

The Employer/Carrier filed a Verified Motion to Tax Costs, seeking reimbursement of \$1,412.45, in taxable costs. The Employee/Claimant did not file a written response to the Motion, with the Office of the Judges of Compensation Claims, however they provided a written response to the Employer/Carrier's Counsel, on or about May 20, 2011.

The following items were admitted into evidence:

**Judge of Compensation Claims Exhibits:**

**Judge's Exhibit #1:** Notice of Evidentiary Final Hearing, and Pre-Hearing Order, as to Employer/Carrier's Verified Motion to Tax Costs, Electronically filed on May 17, 2011. The Notice was served on Counsel for the parties on May 18, 2011.

**Employer/Carrier's Exhibits:**

**Employer/Carrier's Exhibit #1:** Employer/Carrier's Verified Motion to Tax Costs, filed May 17, 2011. The Motion was accompanied by documentary exhibits which included: Petition for Benefits filed March 31, 2011; Partial Dismissal Order, dismissing Penalties and Interest on a Medical Benefit Only claim, served on April 4, 2011; Notice of Voluntary Dismissal, electronically filed on May 11, 2011; Affidavit in Support of Verified Motion to Tax Costs, executed on May 17, 2011; invoice from Dr. Kirk E. Maes, concerning the May 10, 2011 deposition; invoices from P.I.R.A.M.I.D.S.S Inc., the court reporting charges for Dr. Maes', May 10, 2011 deposition.

**Claimant's Exhibits:**

**Claimant's Exhibit #1:** Response to Employer/Carrier's Motion to Tax Costs, served on Counsel for the Employer/Carrier on May 19, 2011. The Claimant's Response was not filed with the Office of Judges of Compensation Claims, until hand delivered during the July 14, 2011 proceeding. Because the Response was not sworn or verified, the Claimant's Response was marked for identification and argument purposes only.

**Joint Exhibits:**

None.

In addition to the exhibits, live and sworn testimony was provided by a single witness. The witness that was sworn in, and gave testimony at the July 14, 2011 Evidentiary Hearing, was Attorney Matthew Troy, attorney for the Employer/Carrier. No other depositions, affidavits, or other documentary exhibits were offered, beyond those listed herein above. The issues presented for my determination from the May 17, 2011 Employer/Carrier's Verified Motion to Tax Costs, were whether the Employee/Claimant owed the Employer/Carrier the sum of \$1,412.45, due to the Notice of Voluntary Dismissal, filed on May 11, 2011.

The Claimant, by and through Counsel, argued that the dismissal was without prejudice, that the Petition for Benefits filed on March 31, 2011 was filed in good faith, and that the Employee/Claimant did not know that Dr. Maes would not support the assertion that the pain management treatment was medically necessary, and thus the Employer/Carrier should not be considered the prevailing party, or be entitled to a recovery of taxable costs.

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the evidence that was presented to me. I have carefully considered the candor, credibility, and demeanor of the live witness, and have resolved all of the conflicts in the live testimony and evidence. In writing this Order, I have attempted to distill the salient issues to get to the findings and conclusions necessary to a resolution. Even though I have not attempted to fully summarize the testimony of the witness, nor to state non-essential facts, this does not mean that I have failed to consider all of the evidence. After careful consideration of all of the evidence presented, and after resolving any and all conflicts herein, I hereby additionally find as follows:

1. The Employee/Claimant allegedly suffered an injury arising out of and in the course and scope of employment on March 12, 2009. The Claimant subsequently retained the services

of the Law Firm of Reich and Mancini, P.A., and various Petitions for Benefits had been filed. The Petition for Benefits in question for this Evidentiary Hearing was the Petition filed March 31, 2011. The claims within the March 31, 2011 Petition for Benefits were set for an Expedited Final Hearing, which was set to take place on March 20, 2011. The March 31, 2011, Petition for Benefits sought authorization of pain management, specifically with Dr. Malone, pursuant to the recommendations of authorized treating orthopedist, Dr. Kirk Maes. In preparation of the May 20, 2011 Expedited Final Hearing, the Employer/Carrier conducted a conference with Dr. Maes, and subsequently set the deposition of Dr. Maes to take place on May 10, 2011.

2. According to Florida Statutes Section 440.25(4)(h), and Rule 60Q-6.118, all discovery is to be concluded and filed at least 15 days prior to an Expedited Final Hearing. The Employer/Carrier filed a motion to extend the time for taking the discovery, and to file the May 10, 2011 deposition of Dr. Maes, for use at the Expedited Final Hearing. The Employee/Claimant also filed a Cross/Notice of taking deposition, for the Dr. Maes deposition as well.

3. The Deposition of Dr. Maes took place on May 10, 2011. That deposition was attended by, and immediately thereafter transcribed by the court reporter. Dr. Maes had charged \$200.00 for his deposition, and a \$600.00 fee for a medical records review. The court reporter had charged an appearance fee, a transcription fee, as well as fees for printing, copying exhibits, delivery, and postage. Due to the earlier entered Order on filing the deposition of Dr. Maes, the Employer/Carrier was forced to expedite the transcription and submission of the May 10, 2011 deposition, for use at the May 20, 2011 Expedited Final Hearing. The Order had required the filing of the deposition prior to 5:00 p.m. on May 16, 2011.

4. Following the deposition, and the inability to present evidence that the pain management treatment was medically necessary, the Claimant filed a Notice of Voluntary Dismissal on May 11, 2011.

5. Having received the Claimant's Notice of Voluntary Dismissal of the March 31, 2011 Petition for Benefits, the Employer/Carrier immediately attempted to contact the court reporter on May 12, 2011, to stop the transcription and mailing of the deposition transcript. However, despite their best efforts, the Employer/Carrier was unsuccessful in derailing the deposition transcription, as it had already been completed.

6. Counsel for the Employer/Carrier accurately and convincingly testified that Florida Statutes Section 440.34(3), rendered the Employer/Carrier as the prevailing party, as a matter of law. The unsworn argument of Counsel for the Claimant, to the contrary, was unpersuasive. The Employer/Carrier adequately and convincingly submitted uncontradicted evidence that the Employer/Carrier had to zealously and responsively defend against the claims from the March 31, 2011 Petition, that were fast approaching the May 20, 2011 Expedited Final Hearing. The Dr. Maes deposition was essential to defend against those issues and claims raised within the Claimant's Petition.

7. Florida Statutes Section 440.34(3), indicates that, "If any party should prevail in any proceedings before a judge of compensation claims or court, there shall be taxed against the nonprevailing party the reasonable costs of such proceedings, not to include attorney's fees." By responsibly preparing for the Expedited Final Merit Hearing, and defending against claims for additional medical benefits, in the March 31, 2011 Petition for Benefits, the Employer/Carrier clearly incurred reasonable and taxable costs. The Employer/Carrier became the prevailing party upon the filing of the Notice of Voluntary Dismissal. Under current case law or decisional

authority, it does not matter from a legal analysis standpoint, that this was the first Voluntary Dismissal filed by the Claimant on those classifications of benefits.

8. The taxation of costs against the Claimant, and in favor of the Employer/Carrier as the prevailing party, has been frequently addressed in recent appellate cases. A number of cases were considered in reaching these ultimate conclusions of law, and findings of fact. Some of those cases considered are: Palm Beach County School District v. Ferrer, 990 So. 2d 13(Fla. 1st DCA 2008); F.A. Richard and Associates v. Fernandez, 975 So. 2d 1224(Fla. 1st DCA 2008); Guckenberger v. Seminole County, 979 So. 2d 407(Fla. 1st DCA 2008); Morris v. Dollar Tree, 869 So. 2d 704(Fla. 1st DCA 2004); Hillsborough County Sherriff's Office v. Hilsman, 23 So. 3d 743(Fla. 1st DCA 2009); and Costco Wholesale Corporation v. Ulett, 995 So. 2d 1016(Fla. 1st DCA 2008).

9. I find the uncontradicted and sworn record evidence establishes that the Employer/Carrier is the prevailing party. Further, the Employer/Carrier, based on the uncontested record evidence, is entitled to reimbursement of incurred, related, taxable, and awarded costs in the amount of \$1,412.45.

WHEREFORE, it is hereby ORDERED and ADJUDGED as follows:

1. The Employer/Carrier has been rendered the prevailing party, pursuant to Florida Statutes Section 440.34(3), due to the May 11, 2011 Notice of Voluntary Dismissal.

2. The Employer/Carrier incurred the reasonable and related costs of \$1,412.45, in properly defending against the claims raised in the March 31, 2011 Petition for Benefits, and in preparation for the May 20, 2011, Expedited Final Merit Hearing.

3. The Claimant shall pay the Employer/Carrier's taxable costs in the amount of \$1,412.45, within 30 days from the date of this Order. In the event that the Claimant fails to

satisfy payment of the above costs within 30 days, the prevailing and statutory interest rate, as established by the Florida Legislature, shall attach, accrue, and shall be appropriate for assessment.

4. The Employee/Claimant's full payment of the \$1,412.45 in taxable costs to the Employer/Carrier shall act as a condition precedent to the Claimant filing or prosecuting any future Petitions for Benefits, unless an Order on Indigency or insolvency is entered.

DONE AND ELECTRONICALLY MAILED to Counsel and served via U.S. mail to the Parties listed below this 15th day of July, 2011, in Melbourne, Brevard County, Florida.



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