

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
WEST PALM BEACH DISTRICT OFFICE

Atanaska Pirintchieva,  
Employee/Claimant,

OJCC Case No. 12-013857SHP

vs.

Accident date: 2/29/2008

Jane E Bistline MD PA/Technology  
Insurance Company,  
Employer/Carrier/Servicing Agent.

Judge: Shelley H. Punancy

ORDER ON EMPLOYER/CARRIER'S MOTION TO TAX COSTS

AFTER DUE AND PROPER NOTICE, this cause came on to be heard 11/14/14 in Palm Beach County, Florida. The Claimant was represented by Ramon Hudec, Esquire. The E/C was represented by Andrew R. Borah, Esquire. This Order resolves the E/C's Motion To Tax Costs pursuant to section 440.34 (3), Fla. Stats. and Rules of Procedure for Workers' Compensation Adjudications, Rule 60Q-6.124 (3).

Documentary Exhibits:

Employer/Carrier (E/C):

1. Verified Motion To Tax Costs filed 9/19/14 with attachments. Claimant's objection to the Adjuster's Affidavit dated 9/17/14 (attachment-Exhibit "E") on the basis that the signatory, Elizabeth Knorr, is not an expert witness, and as such may not provide testimony via an affidavit. E/C Response-Because claimant's Response to the E/C Motion is untimely and not verified, and therefore not evidence, all assertions in the E/C's Verified Motion should be accepted as true. In addition, the adjuster testified via telephone as she is allowed to do with approval of the JCC. Ruling-overruled-See Rule 60Q-6.124(3)(b) and Rule 60Q-6.116 (3), See also Hale v. Shear Express, Inc., 946 So.2d 94 (Fla. 1<sup>st</sup> DCA 2006).

Claimant:

1. (a) Prescription from Dr. Kohn dated 8/29/13; (b) Consult Request from Dr. Chaitoff dated 10/18/13; (c) Letter to Claimant's counsel from Dr. Kohn dated 11/30/13; and (d) Letter to Dr. Chaitoff from Claimant's counsel dated 1/13/14. E/C's objection to (c) and (d)-not medical reports, hearsay. Ruling-overruled.

2. Pretrial Stipulation of the parties dated 6/11/14.

Live Testimony:

1. Elizabeth Knorr, adjuster-AmTrust North America and Technology, via telephone.

Stipulations:

1. I have jurisdiction of the parties and subject matter of this claim.

Findings of Fact and Conclusions of Law:

1. Claimant filed a Petition for Benefits on 1/25/14 seeking the following benefits:
  - a) Authorization of an upper extremity orthopedic surgery specialist for evaluation/treatment per Drs. Chaitoff and Kohn;
  - b) Authorization of Dr. Saylor and/or Dr. Dell, upper extremity orthopedic surgery specialists, for evaluation/treatment.
  - c) Authorization of a certified hand therapist for comprehensive hand and physical therapy to aid with desensitization.
  - d) Authorization of a psychiatrist for evaluation/treatment.
  - e) Authorization of Dr. Mark Barnett, psychiatrist (sic), for evaluation/treatment.
  - f) Attorney's fees and costs.
  - g) Penalties and interest.

2. Within 30 days of the filing of the PFB, the E/C authorized Dr. Mark Barnett, psychologist, and a certified hand therapist. The claim for a psychiatrist was abandoned by the Claimant as evidenced by its absence on the Pretrial Stipulation.

3. The E/C asserted defenses to the remaining claims. A Merits Hearing was scheduled for 8/25/14.

4. On 8/22/14, Claimant filed a Notice of Issue Resolution/Withdrawal of the remaining medical claims from the 1/27/14 PFB, along with the claim for penalties, interest, attorney's fees and costs. Based upon Claimant's representation that the upcoming Merit Hearing was unnecessary, same was marked as cancelled on the OJCC docket.

5. Ms. Knorr testified as to the costs necessarily incurred by the Carrier in defense of Claimant's PFB as reflected on the Affidavit she executed on 9/17/14. The amount of the costs is \$1,653.46.

6. A defendant generally becomes the "prevailing party" in a workers' compensation action, so to be entitled to an award of costs, when a plaintiff dismisses its action. See section 440.34 (3), Fla. Stats. (2003), and Palm Beach County School District v. Ferrer, 990 So.2d 13 (Fla. 1<sup>st</sup> DCA 2008). In the instant case, on 8/22/14 Claimant withdrew the outstanding medical claims from the 1/27/14 PFB scheduled for trial on 8/25/14. Thus, the E/C became the "prevailing party" and became entitled to reimbursement of the reasonable and relevant costs incurred in the defense of the claims presented. See Aguilar v. Kohl's Department Stores, Inc., 68 So.3d 356 (Fla. 1<sup>st</sup> DCA2011).

7. Counsel for the parties did not testify at the instant evidentiary hearing, rather, they presented argument at the close of the proceeding. Claimant argued that the untimeliness of her

unverified response was irrelevant and she should still have the ability to question the reasonableness of the costs claimed. I find that Claimant's position is contrary to the Court's holding in Hillsborough County Sheriff's Office v. Hilsman, 23 So.3d 743 (Fla. 1<sup>st</sup> DCA 2009). Unsworn responses and arguments of counsel are not evidence upon which a JCC may rely. Moreover, failure to file a timely ...response... shall, absent good cause, result in acceptance of the allegations in the motion as true. id. See also 60Q-6.124 (3)(b).

8. Claimant argued that the 1/25/14 PFB was filed based on the recommendations of Drs. Kohn and Chaitoff, authorized treating physicians. Claimant followed-up with the providers and obtained confirmation of the recommendations. Subsequently, because the providers changed their minds as to the medical necessity for the recommendations after being conferenced by the E/C, Claimant voluntarily dismissed the claims for same. Claimant's argument against the E/C's claim for reimbursement of costs; that is, essentially that it would be unfair to assess costs for a good faith claim that was neither fraudulent or frivolous, has been rejected by the Court. See F.A. Richards And Associates v. Fernandez, 975 So.2d 1224 (Fla. 1<sup>st</sup> DCA 2008) and Guckenberger v. Seminole County, 979 So.2d 407 (Fla. 1<sup>st</sup> DCA 2008).

9. Subsection 440.34 (3) states, "if any party should prevail in any proceedings before a judge of compensation claims or court, there shall be taxed against the unprevailing party the reasonable costs of such proceedings, not to include attorney's fees." (Emphasis added). There appears to be no discretion in this assessment. Given the mandatory language in section 440.34 (3), Fla. Stats. (2003), all parties to workers' compensation cases are on notice that costs are at issue. See Fernandez.

10. Lastly, Claimant argued that the Statewide Uniform Guidelines for Taxation of Costs

(Uniform Guidelines) shall be considered in making a determination as to the reasonableness of the costs claimed. For the following items, Claimant submits that same should not be taxed against her: Conferences held with Drs. Chaitoff and Kohn were unnecessary when considered in conjunction with the depositions of the physicians and amount to “double costs”; the second deposition of the Claimant did not yield any information relevant to the medical issues to be heard at trial and therefore served no purpose, and Claimant objected to same on the Pretrial Stipulation; and the medical records fees were not set forth with specificity. Claimant submits that if the E/C’s Motion is granted, the only reasonable taxable costs are those for the deposition transcripts of Drs. Chaitoff and Kohn filed by the E/C in anticipation of the trial.

11. The E/C response argues that all costs claimed were reasonable, necessary and relevant in that they were incurred in the defense of Claimant’s medical claims.

12. While the Uniform Guidelines suggest that conference costs “should not” be taxed, this provision of the Uniform Guidelines, like all of the provisions, is advisory only. See Martin v. Code Enforcement, City of Jacksonville, 122 So.3d 438 (Fla. 1<sup>st</sup> DCA 2013). As conceded by Claimant, the outcome of the E/C’s February 2013 conferences with Drs. Chaitoff and Kohn affected Claimant’s decision to withdraw the medical claims. As argued by the E/C, Claimant’s second deposition could have been used for impeachment purposes at trial if the need arose. The medical records were addressed with the authorized providers to show the numerous physicians already seen by Claimant.

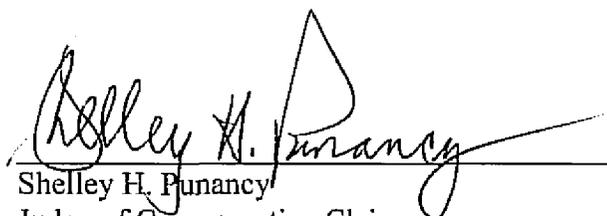
13. After careful consideration of the evidence presented, and after hearing and considering the argument of counsel, and after review of statutory and case law authority, I find that the E/C has shown that the costs claimed as taxable against the Claimant were relevant and reasonably

necessary in the defense of the medical claims that were scheduled to be tried on 8/25/14, but withdrawn on 8/22/14. I accept the sworn affidavit of the adjuster, Ms. Knorr delineating a breakdown of all costs sought to be taxed.

WHEREFORE, it is ORDERED and ADJUDGED that:

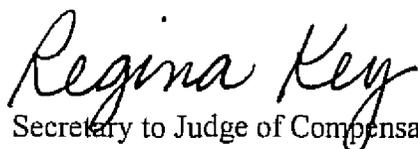
1. The E/C's Verified Motion To Tax Costs is GRANTED.
2. The Claimant shall reimburse the E/C taxable costs incurred in this matter in the amount of \$1,653.46.

DONE AND ORDERED this 15th day of December, 2014, in West Palm Beach, Palm Beach County, Florida.

  
Shelley H. Punancy  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
West Palm Beach District Office  
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#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished  
VIA E-Mail to the following Counsel on December 15, 2014.

  
Secretary to Judge of Compensation Claims

Ramon Hudec  
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