

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

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OJCC NO.: 13-018933CMH
D/A: 2/14/2012
Judge: Charles M. Hill, III

FINAL EVIDENTIARY ORDER

THIS MATTER came before me in two sessions, the first on August 12, 2014, the second on September 25, 2014 to conclude, in deference to the claimant's substituted attorney who expressed concern over notice sufficiency and to otherwise afford the parties additional time to exchange documentation and witness lists should they so desire.

The E/C sought recovery of reasonable costs in the amount of \$970.00 as the prevailing party regarding compensability of the right shoulder condition and attendant surgery.

The claimant defensively asserted while the E/C was technically considered the prevailing party on this issue, the 8/19/13 PFB was submitted in good faith upon the initial opinions of the authorized treating physician, Rafael Fernandez, MD, who had later recommended right shoulder surgery as also work-related. Secondly, oral challenges were

made to the amount of costs itemized, beyond the 7/10/13 medical conference fee of \$200.00, as unreasonable. No written response in opposition to the E/C's motion had been submitted by the claimant through the day this matter was concluded.

Documentation was marked and admitted into evidence or otherwise marked for ID or proffer purposes. An appendix thereof is attached. It was understood that the instant admission of medical records and reports were applicable to this limited hearing only, and their current admission would not serve to assure their admissibility in any future hearing. The E/C's motion to tax costs was reclassified as E/C exhibit (1), it being appropriately verified. The E/C objection to the memorandum/questionnaire by Lori Woody, Inc dated June 24, 2013 is sustained and claimant item (2) for ID is reclassified as a proffer on his behalf, it not being a medical record envisioned by F.S. 440.29 (4). (The E/C had no objection to the balance of Dr. Fernandez's records per their response 1/21/14.) The claimant withdrew his chronology marked item (3) for ID. The E/C's objection to the progress note by Dr. Fernandez of 5/13/13, initially marked for ID purposes, is overruled and classified as claimant exhibit (7).

AFTER DUE CONSIDERATION given to the evidence admitted, argument of counsel and case law citations the following findings of ultimate fact and conclusions of law shall be applicable.

1. 60Q – 6.124 (3)(b). This rule governs the submission of motions to recover disputed attorney's fees, as well as taxation of reasonable costs. Once a motion is submitted and served the filing of a written response is made necessary within 30 days thereof. This was not accomplished by the claimant, nor was an extension of time ever requested. I find that no good cause was shown by the claimant to excuse his failure to respond in writing to the subject verified motion to tax costs. The averments in the motion are thus accepted as true and the costs

enumerated therein found to be reasonable. I find the E/C is the prevailing party in this cause and the costs of \$970.00 are taxable against the claimant. The motion is granted on this procedural basis.

2. Chronology of events. The documentation admitted reveals the following chronology: progress note 5/13/13 by Dr. Fernandez advising receipt of authorization to treat the right shoulder from the case manager; conference by the E/C with Dr. Fernandez 7/10/13; confirmation letter 7/22/13 (7/25/13) wherein Dr. Fernandez rejects the accident as the major contributing cause of the right shoulder condition; surgery of the right shoulder placed into formal litigation by the PFB filing 8/19/13; a denial of compensability of the right shoulder condition in the R-PFB submitted 9/19/13 (also asserting Miami-Dade Fire Rescue was previously paid 7/18/13); deposition of the claimant 10/23/13; state mediation 10/28/13 preserving the issue of right shoulder surgery for adjudication; first deposition taken of Dr. Fernandez 2/6/14; and thereafter, voluntary dismissal 2/10/14 of the PFB filed 8/19/13. Based on the foregoing chronology, I find that the E/C is the prevailing party on the issue in dispute and that the costs itemized in E/C exhibit (2) totaling \$970.00 were reasonable and necessary in defending the right shoulder claim contained within the 8/19/13 PFB. The potential good faith filing and litigation of the claim cannot serve to alter recognition of the E/C in this instance as the prevailing party. The motion is also granted on this substantive basis.

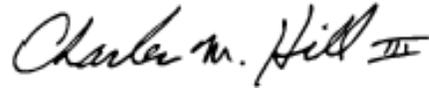
WHEREFORE premises considered, it is

ADJUDGED that:

3. The claimant is directed to reimburse the E/C, as the prevailing party in this matter, the sum of \$970.00 as and for reasonable and taxable costs associated with the 8/19/13 PFB submission.

4. Jurisdiction is reserved to later determine those claims and defenses associated with the 6/24/14 PFB submission; and, jurisdiction is further reserved to later determine any other unresolved fee or cost issue.

ORDERED in Chambers this 29th day of September, 2014.



Charles M. Hill, III
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on counsel and carrier of record via e-mail this 29th day of September, 2014.



Secretary to Judge of Compensation Claims

Appendix

Judge's exhibits:

1. Mediation agreement dated October 28, 2013 marked Judge's exhibit (1).
2. Notice of evidentiary motion hearing dated April 1, 2014 marked Judge's exhibit (2).
3. Motion for protective order and/or continuance of evidentiary hearing set for 7/17/14 dated June 23, 2014 and order granting same in part dated July 1, 2014 marked Judge's exhibit (3).
4. Notice of hearing dated August 11, 2014 marked Judge's exhibit (4).

E/C (movant) exhibits:

1. Verified motion to tax costs dated April 1, 2014 marked E/C exhibit (1).
2. Affidavit in support of verified motion dated April 1, 2014 marked E/C exhibit (2).
3. PFB dated August 19, 2013 and R-PFB dated September 19, 2013 marked E/C exhibit (3).
4. Voluntary dismissal of the 8/19/13 PFB dated February 10, 2014 marked E/C exhibit (4).

Claimant (respondent) exhibits and a proffer:

1. Progress note by Rafael Fernandez, MD dated June 24, 2013 marked claimant exhibit (1).
2. Questionnaire signed by Rafael Fernandez, MD dated July 3, 2013, initially marked item (2) for ID only, reclassified as a proffer on behalf of the claimant, as referenced in the motion to receive medical records filed 1/9/14 and the response thereto.
3. Chronology offered at hearing commencement marked item (3) for ID only on behalf of the claimant (later withdrawn).
4. Progress note by Rafael Fernandez, MD dated March 26, 2013 marked claimant exhibit (4).
5. Deposition (2nd) of Rafael Fernandez, MD dated April 17, 2014 marked claimant exhibit (5).
6. Questionnaire (letter) dated July 22, 2013 signed by Rafael Fernandez, MD marked claimant exhibit (6).