

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
FT. LAUDERDALE DISTRICT OFFICE

Heather Wynne,  
Employee/Claimant,

OJCC Case No. 14-021210GBH

vs.

Accident date: 8/29/2014

TGIF/Gallagher Bassett Services, Inc.,  
Employer/Carrier/Servicing Agent.

Judge: Geraldine B. Hogan

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**ORDER ON EMPLOYER/CARRIER'S MOTION FOR SANCTIONS**

This matter came before the undersigned Judge of Compensation Claims on the Employer/Carrier's Motion for Sanctions filed on June 19, 2015. Claimant filed a Verified Petition for E/C-Paid Attorney's Fees and Costs on May 12, 2015 (Verified Petition). E/C asserted that Claimant's counsel should be sanctioned for pursuing entitlement to E/C paid fees and costs. For reasons set forth below I find that a sanction is appropriate pursuant to Fla. Admin. Code Rule 60Q-6.125(2).

1. Fla. Admin. Code Rule 60Q-6.125(2) (a) – (c) provides that:

By filing a pleading or other document or presenting argument before the judge at hearing, an attorney or unrepresented party is certifying to the best of that person's knowledge, information, and belief, formed after inquiry reasonable under the circumstances, that:

(a) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) The claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of a new law;

(c) The allegations and other factual contentions are true and have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

2. Fla. Admin. Code Rule 60Q-6.125(3) provides, in part, that if the judge determines that subsection (2) has been violated, the judge may impose an appropriate sanction.

### **Petitions for Benefits, Responses to PFBs and Payments Dates**

3. Claimant filed PFBs on 09/15/2014, 11/17/2014, 12/03/2014 and 05/01/2015. E/C did not seek sanctions pursuant to the 09/15/2014 PFB.
4. The **11/17/2014 PFB** requested payment of the following medical bills:
  - a. Phoenix Emergency Medicine of Broward, LLC in the amount of \$603.00 for 8/29/14 D.O.S.
  - b. First Path, LLC in the amount of \$20.00 for 8/29/14 D.O.S.
  - c. Broward Health Imperial Point in the amount of \$2,687.00 for 8/29/14 D.O.S.
5. The Response to PFB filed on 11/18/2014 included the response to the 11/17/2014 PFB. The carrier advised that the bills from Phoenix Emergency, First Path LLC, and Broward Health Imperial Point, for DOS 08/29/14 were never denied. The response further advised that such bills will be paid at the appropriate fee schedule, upon receipt on proper forms. According to the payout ledger the bill from Phoenix Emergency was paid on December 17, 2014 in the amount of \$126.00. The bill from First Path was paid on December 11, 2014 in the amount of \$3.60. The bill from Imperial Point was paid on December 15, 2014 in the amount of \$2,015.25.
6. Benefits requested in the **12/03/2014 PFB** included payment of bill from Broward Health in the amount of \$2,687.00 for 8/29/14 D.O.S. The Response to the 12/03/2014 PFB filed on 12/4/2014 advised that the bill from Broward Health Imperial Point was never denied. The adjuster further advised that the provider was notified to submit bills on proper form and that said bills will be paid at the appropriate fee schedule, upon receipt on proper form. As previously noted the payout ledger indicates that the bill from Broward Health Imperial Point was paid on December 15, 2014.
7. Benefits requested in the **05/01/2015 PFB** included payment of bill from North Broward Radiologist in the amount of \$290.00. The PFB asserted that this was the second time a PFB was filed requesting payment of this bill and E/C failed to pay the balance of same. The Response to the 05/01/2015 PFB filed on 05/07/2015 advised that the \$290.00 bill from North Broward Radiologists was never denied. The provider has been notified to submit the bills on proper form and that said bill will be paid at the appropriate fee schedule, upon receipt on proper forms. According to the payout ledger the bill from North Broward Radiologist was paid on June 16, 2015 in the amount of \$63.00.

### **Notice of Resolution**

8. On January 15, 2015 Claimant filed an Amended Notice of Resolution of Issues (Notice of Resolution) and advised that the issues in the PFBs filed on 09/15/2014, 11/17/2014, 12/03/2014 resolved, except for attorney's fees and costs. Pursuant to the Notice of Resolution the Claimant indicated that as of 1/15/2015 the Claimant no longer received bills from Phoenix, First Path and Imperial Point. These were the bills listed in the 11/17/2014 PFB. Claimant's counsel also asserted that E/C agreed to pay the bill listed in the 12/3/14 PFB.

### **Motion to Compel Verified Petition for Attorney's Fees and Costs**

9. On February 6, 2015 E/C filed a Motion to Compel Filing of Verified Motion for Attorney's Fees and Costs. On April 13, 2015 I entered an order granting E/C's Motion to Compel Filing of Verified Motion for Attorney's Fees and Costs. Pursuant to that order, Claimant was ordered to file a Verified Motion for Attorney's Fees and Costs regarding entitlement within 45 days.
10. Prior to filing the Verified Petition, Claimant filed the 05/01/2015 PFB. On May 12, 2015 Claimant filed the Verified Petition for E/C-Paid Attorney's Fees and Costs. Pursuant to the Verified Petition, Claimant asserted fee entitlement on all PFBs filed on this case, including the one filed on 05/01/2015. All of the PFBs requested payment of medical bills and Claimant asserted that E/C did not timely pay all of the bills. Claimant further asserted that some of the bills were in the hands of a collection company. Claimant further asserted that E/C either denied the claims outright or failed to provide them within the time allowed by chapter 440 to avoid attorney fee liability. Claimant asserted that the total amount paid at the time of filing the Verified Petition was \$2,490.25. To support this assertion Claimant's counsel attached a copy of the carrier's payout ledger to the Verified Petition as an exhibit.

### **Hearing and Order on the Verified Petition for Fee Entitlement**

11. A hearing on the Verified Petition was held on July 7, 2015. At the time of the Fee Entitlement Hearing Claimant's counsel withdrew claims for attorney's fees and costs pursuant to the petitions filed on 09/15/2014, 11/17/2014, and 12/03/2014. The July 7, 2015 hearing only addressed fee entitlement pursuant to the 05/01/2015 PFB. E/C, through counsel, argued that the claim for fee entitlement pursuant to the 05/01/2015 petition should be denied because claimant's attorney filed the May 12, 2015 verified petition less than 30 days from the date the carrier received the May 1, 2015 petition for benefits.

12. Pursuant to the Order on Verified Petition for E/C Paid Attorney's Fees and Costs I found that the carrier did not wrongfully refuse to furnish the benefits requested in the May 1, 2015 petition. I noted that in the Response to the Petition for Benefits, timely filed on May 7, the adjuster advised that the payment for services provided by North Broward Radiologist were never denied. I also noted that sec. 440.25(4)(j) provides, in part, that regardless of the date benefits were initially requested, attorney's fees do not attach until 30 days after the date the carrier or self-insured employer receives the petition. I found that, pursuant to sec. 440.25(4)(j), claimant was not entitled to an E/C paid fee on the date her attorney filed the verified petition.

### **Request for Sanctions**

13. E/C argued that Claimant's attorney violated (a), (b) and (c) of Fla. Admin. Code 60Q-6.125(2). E/C asserted that the carrier paid all of the bills listed in the 11/17/2014 and 12/03/2014 PFB within 30 days from the date the PFBs were filed.
14. According to the assertions of E/C, the fact that Claimant's counsel withdrew the claims for fees on the PFBs filed on 11/17/2014 and 12/03/2014 at the initiation of the fee entitlement hearing supports a finding that there was no basis for pursuing fees on those petitions. E/C further asserted that the time to withdraw the claim for fees on those petitions was within the 21 days provided for in 60Q-6.125(4) (a).
15. Fla. Admin. Code 60Q-6.125(4)(a) provides that a motion for sanctions shall be served but shall not be filed with or presented to the judge unless the challenged paper, claim, defense, allegation, or denial is not withdrawn or appropriately corrected within 21 days after service of the motion. There was no assertion from Claimant's counsel that the Motion for Sanctions was not received at least 21 days prior to filing with the JCC.
16. E/C argued that the claim for attorney's fee had no colorable non-frivolous argument that the Claimant was entitled to an E/C paid fee for obtaining any of the benefits requested in the 11/17/2014 and 12/03/2014 PFBs.
17. E/C requested sanctions regarding the 05/01/2015 PFB on two grounds. First, this PFB asserted that this was the second PFB filed requesting payment of bill from North Broward Radiologist. E/C asserted that this statement was false and it was undisputed that the 05/01/2015 PFB was the first time Claimant requested payment of this bill. Next, E/C argued that fee entitlement regarding the 05/01/2015 PFB was legally impossible when Claimant's counsel filed the Verified Petition on 05/12/2015.
18. E/C argued that seeking fee entitlement in the Verified Petition regarding the 05/01/2015 PFB was frivolous and that Claimant's counsel should be sanctioned for going forward

with the fee hearing on that PFB. E/C argued that seeking fee entitlement on the 05/01/2015 PFB violated 60Q-6.125(2) (a), (b) and (c).

19. E/C further asserted that subsection (c), which provides that the allegations and other factual contentions are true and have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, applies to the PFB filed on 05/01/2015. The PFB requested payment of bill to Broward Radiologist in the amount of \$290.00. Pursuant to that PFB this was the second time a PFB is being filed requesting payment of this bill as the E/C has failed to pay the balance of same. E/C argued that payment of this bill was not previously requested and the allegations made in the 05/01/2015 PFB were false. Yet, Claimant went forward with the fee entitlement hearing on the claims filed in the 05/01/2015 PFB.

### **Claimant's Arguments in Response to Motion for Sanctions**

20. Claimant's counsel asserted that language in the 05/01/2015 PFB, asserting that the request for payment of bill to Broward Radiologist in the amount of \$290.00 was filed in a prior petition, was a mistake. Counsel stated that this assertion was not included in the Verified Petition and was not argued at the time of the fee entitlement hearing.
21. Claimant's counsel asserted that the 5/1/2015 PFB was included in the Verified Petition to prevent any future assertions of waiver or estoppel. Claimant's counsel further asserted that the payout ledger indicating that the carrier paid the bill to North Broward Radiologist was not provided to Claimant's counsel until July 7, 2015. Claimant's counsel argued that the bill was still outstanding when E/C filed the Motion for Sanctions. According to the payout ledger the bill to North Broward Radiologists was not paid until June 16, 2015, more than 30 days from the filing of the May 1, 2015 PFB. Claimant's counsel asserted that the amount billed was \$290.00 and the amount paid, pursuant to the payout ledger, was \$63.00.
22. Claimant's counsel asserted that when the 11/17/2014 and 12/03/2014 PFBs were filed bills had not been paid and as set forth in the Verified Petition the Claimant was getting collection notices. Counsel for Claimant further asserted that the bills were not paid in full, as noted in the payout ledger. Counsel for Claimant asserted that when E/C filed the Motion for Sanctions there were still outstanding balances on the bills.
23. According to Claimant's counsel, the decision was made not to go forward on the claims for fees and costs pursuant to the 11/17/2014 and the 12/03/2014 PFBs at the time of the fee hearing was not lack of fee entitlement. Counsel asserted that the decision was made not to pursue fee entitlement on those PFBs because the billing records custodians and

the claims adjuster had not been deposed.

### Conclusion

24. The reason asserted for waiting until the time of the fee hearing to withdraw the claims for fees and costs requested in the 11/17/2014 and the 12/03/2014 PFBs is without merit. Even if billing records custodians and the adjuster provided deposition testimony, Claimant's counsel did not advise what information would have been provided in support of the fee claim for payment of medical bills made within 30 days from the date Claimant filed the PFBs.
25. The contention that the bills were not paid in full lacks merit because the carrier is only required to pay medical bills pursuant to the workers' compensation fee schedule. (See 440.13(12)). In response to the PFBs the adjuster advised that the bills will be paid at the appropriate fee schedule. Claimant's counsel did not offer any evidence or argument that the fee schedule amounts were not correct.
26. The argument that the 05/01/2015 PFB was included in the Verified Petition to prevent any future assertion of waiver or estoppels is without merit. Pursuant to sec. 440.25(4)(j) Fla. Stat., there was no fee entitlement regarding the 05/01/2015 PFB when Claimant filed the Verified Petition on 05/12/2015.
27. I find that by pursuing the claims for fees and costs raised in the Verified Petition filed on 5/12/2015 Claimant's counsel needlessly increased the cost of litigation. The arguments for fee entitlement were frivolous and were not warranted by existing law. Claimant's counsel did not contend that fee entitlement was sought for the extension, modification or reversal of existing law or the establishment of a new law. Finally, the argument that fee entitlement based on the assertion that bills were not paid in full and the inclusion of the 5/1/2015 PFB in the Verified Petition filed on 5/12/2015 did not have any evidentiary support.

WHEREFORE, it is ORDERED and ADJUDGED that,

1. The E/C's Motion for Sanctions is GRANTED.
2. I reserve jurisdiction to determine the amount of the appropriate sanction.

DONE and ORDERED this 30<sup>th</sup> day of October, 2015, in Lauderdale Lakes, Broward County, FL.



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Geraldine B. Hogan

Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
Ft. Lauderdale District Office  
4500 North State Road 7, Building I, Suite 200  
Lauderdale Lakes, Florida 33319  
(954)714-3400  
www.fljcc.org

COPIES FURNISHED:

Gallagher Bassett Services, Inc.  
GB-FloridaZone-Mail@gbtpa.com

Kevin R. Gallagher, Esquire  
KGallagher@GallagherLawGroup.com, krgesq@aol.com

Andrew R. Borah, Esquire  
aborah@hrmcw.com, sfournier@hrmcw.com

## Appendix

### Claimant's Exhibits

1. Petition for Benefits filed on 11/17/2014 – with attachments (Docket ID #'s 8 and 9)
2. Response to Petition for Benefits filed on 11/18/2014 (Docket ID #10)
3. Petition for Benefits filed on 12/03/2014 with medical bills (Docket ID #'s12 and 13)
4. Response to Petition for Benefits filed on 12/04/2014 (Docket ID # 16)
5. Response to Petition for Benefits filed on 05/07/2015(Docket ID # 46)
6. Payout Ledger (Docket ID # 59)

### Employer/Carrier's Exhibits

1. Employer/Carrier's Motion for Sanctions (Docket ID # 52)
2. Verified Petition for E/C – Paid Attorney's Fees and Costs (Docket ID # 47)
3. Order on Verified Petition for E/C – Paid Attorney's Fees and Costs (Docket ID# 63)
4. Petition for Benefits filed on 05/01/2015 (Docket ID # 44)
5. Order on Employer/Carrier's Motion to Compel Filing of Verified Motion for Attorney's Fees and Costs (Docket ID # 40)