

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

Glendoria Alston,)	
Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 11-013828NSW
Lakeview Center, Inc./Crum & Forster,)	
Employer/ Carrier/ Servicing Agent.)	Accident date: 10/6/2010
_____)	

FINAL EVIDENTIARY ORDER TAXING COSTS

THIS CAUSE came on to be heard in Pensacola, Escambia County, Florida on 06-04-12 upon E/C's Motion to Tax Costs. The Motion was filed 03-12-12. The Final Hearing occurred eighty-four (84) days after the Motion was filed and this Order was entered one (1) day thereafter. C. Bowen Robinson, Esq. appeared on behalf of the E/C. Stephen Hogan, Esq., appeared in Pensacola on behalf of Claimant.

Submitted into evidence at the Final Hearing were the following documents, each accepted, identified and placed into evidence without objection except where noted, as Judge's Exhibits, Joint Exhibits, Claimant's Exhibits, or E/C Exhibits, as follows:

JUDGE'S EXHIBITS MARKED FOR THE RECORD:

- #1. Pre-Trial Stipulation filed 05-02-12.
- #2. E/C's Motion to Tax Costs filed 03-12-12.
- #3. Petition for Benefits filed 06-16-11.
- #4. Claimant's Voluntary Dismissal filed 10-12-11.

JOINT EXHIBITS:

None.

E/C's EXHIBITS:

- #1. Affidavit of Costs of Mike Rumberger dated 01-24-12.

CLAIMANT'S EXHIBITS:

#1. Motion to Take Judicial Notice of civil complaint filed in Circuit Court.

In making the determinations set forth below, I have attempted to distill the salient facts together with the findings and conclusions necessary to resolve this claim. I have not attempted to painstakingly summarize the substance of the parties' arguments, nor the support given to my conclusions by the various documents submitted and accepted into evidence; nor have I attempted to state nonessential facts. Because I have not done so does not mean that I have failed to consider all of the evidence. In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all evidence submitted to me. I have considered arguments of counsel for the respective parties, and analyzed statutory and decisional law of Florida.

Based upon the parties' stipulations and the evidence and testimony presented, I find:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.
2. The parties' stipulations and agreements, set forth in the pretrial compliance questionnaire are accepted, adopted and made an order of the Office of the Judge of Compensation Claims.
3. Any and all issues raised by way of the Motion to Tax Costs, but which issues were not dismissed or tried at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the Claimant and, therefore, are Denied and Dismissed with prejudice. See, Scotty's Hardware v. Northcutt, 883 So.2d 859 (Fla. 1st DCA 2004).
4. Ch. 440.34(3), F. S., provides "[i]f any party should prevail in any proceedings before a judge of compensation claims or court, there shall be taxed against the non-prevailing party the reasonable costs of such proceedings, not to include attorney's fees." The parties are in agreement E/C was the prevailing party in this matter by virtue of Claimant's voluntary dismissal of her Petition for Benefits.
5. The affidavit of Mike Rumberger sets forth the various costs incurred by E/C in defense herein. Claimant contends none of the costs set forth in the affidavit are taxable as no documents, records or depositions were ever offered in evidence buy E/C. While true, the reason is simply that Claimant dismissed her claim and no Final Hearing was held. Such does not however preclude E/C from taxing costs incurred in defending such Petition.
6. The Statewide Uniform Guidelines for Taxation of Costs in Civil matters are applicable in worker' compensation claims though such are merely advisory and subject to the discretion of the JCC. As stated in the Guidelines, the moving party has the burden of establishing the requested costs were reasonably necessary in

defending or prosecuting the case at the time the action precipitating the cost was taken. Taxable costs in such regard generally will include costs incurred in taking depositions including court reporter charges; expert witness fees incurred in obtaining deposition testimony; and costs of copies of documents obtained during discovery even if not used at trial.

7. E/C withdrew its claim to tax the costs of conferences with Drs. VerVoort and Sackheim. From review of the remaining items set forth in Mr. Rumberger's affidavit, I find all other costs related to depositions of Claimant, Dr. VerVoort and Dr. Sackheim are appropriate and taxable with the exception of the "Doctor Deposition Fee" of Drs. VerVoort and Sackheim. Pursuant to Ch. 440.13(10), a health care provider is limited to \$200.00 per hour. It is the burden of the party seeking the recovery of costs to establish the claimed costs incurred were reasonably necessary at the time the action precipitating the costs was taken either in prosecuting or defending the case. Landmark Winter Park, LLC v. Colman, 24 So.3d 788 (Fla. 5th DCA 2009). No evidence was introduced establishing the time either physician expended either preparing for or attending their respective deposition. While E/C did note in closing the length of time each deposition lasted, such was not evidence herein. The sole evidence as to costs was the affidavit of Mr. Rumberger and such does not indicate the time either physician expended preparing for or attending their deposition so as to support an award of costs in any amount.

8. Claimant also contends E/C should not be permitted to tax costs incurred in obtaining medical records from either Dr. Sackheim or Dr. VerVoort as their medical records should have been in E/C's file, having been submitted previously in support of their billings. As a result, all E/C needed to do was review its file in order to retrieve the records. While such may have been one means of obtaining records, it is not the sole means, nor would any reasonable trial attorney rely upon records obtained in such manner as being complete. I find costs expended by E/C obtaining medical records from Drs. VerVoort and Sackheim taxable.

9. Claimant contends the records obtained from Drs. Nye, Newlin Chiropractic and Walmart are not taxable as the same were mere "fishing expeditions." While such may be true, until E/C obtains such records it has no means of determining what such discovery may reveal and whether its efforts were fruitful. Simply paying monies to obtain these records does not alone render the cost taxable however, It remains E/C's burden to present evidence the records obtained were relevant and material to some matter at issue and E/C presented no such evidence. While the evidence established E/C paid for these records, it presented no evidence what it obtained had any evidentiary value or lead E/C to discover other evidence which may have been relevant and admissible had this matter proceeded to Final Hearing. I find the costs of obtaining records from Dr. Nye, Newlin Chiropractic and Walmart not taxable.

10. I find therefore the following items to be taxable:

Dr. VerVoort	medical records	\$ 36.50
Dr. Sackheim	medical records	6.00
Claimant deposition	court reporter fee	358.75

Dr. VerVoort	court reporter fee	317.05
Dr. Sackheim	court reporter fee	<u>186.50</u>
TOTAL TAXABLE COSTS		\$904.80

It is therefore,

ORDERED AND ADJUDGED that:

1. E/C's Motion to Tax Costs is **GRANTED**. E/C shall have and recover from Claimant, Glendoria Alston, costs in the sum of \$904.80.
2. Claimant's ore tenus Motion to Dismiss and ore tenus Motion for Attorney's Fees and Costs are **DENIED**.

DONE AND ELECTRONICALLY MAILED this 5th day of June, 2012, in Pensacola, Escambia County, Florida.



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