

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
MELBOURNE DISTRICT  
JUDGE PAUL T. TERLIZZESE**

**EMPLOYEE:**

John M. Bradshaw  
6176 Brandt St.  
Cocoa, FL 32927

**ATTORNEY FOR EMPLOYEE:**

J. David Parrish, Esquire  
Bichler, Kelley & Parrish, P.A.  
541 South Orlando Ave, Suite 310  
Maitland, FL 32751

**EMPLOYER:**

Brevard County Board of Commissioners  
2725 Judge Fran Jamieson Way  
Building B, 2nd Floor  
Viera, FL 32940

**ATTORNEY FOR EMPLOYER/CARRIER:**

Derrick E. Cox, Esquire  
Hurley, Rogner, Miller, Cox, Waranch &  
Westcott, P.A.  
1560 Orange Avenue, Suite 500  
Winter Park, FL 32789

**CARRIER:**

Preferred Governmental Claim Solutions  
P.O. Box 958456  
Lake Mary, FL 32795-8456

**OJCC CASE NO.:** 09-029818PTT  
**D/A:** 9/24/2009

**ORDER AWARDING TAXABLE COSTS**

THIS MATTER came on for an Evidentiary Hearing before the undersigned Judge of Compensation Claims pursuant to a Motion to Tax Costs, filed by the Employer/Carrier on June 16, 2010, and an Amended Motion to Tax Costs, filed by the Employer/Carrier on July 2, 2010. The Evidentiary Hearing was held and concluded on September 15, 2010. Present and representing the employee was J. David Parrish, Esquire. Present and representing the Employer/Carrier was Derrick E. Cox, Esquire. At the conclusion of the Hearing, I announced my detailed findings of fact and conclusions of law in this claim, which are incorporated herein by direct reference.

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In making my additional 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, including the Employer/Carrier's Composite Exhibits #1 and #2. I have observed the candor and demeanor of the witnesses, the sworn testimony of Attorney Derrick Cox and Attorney David Parrish, and resolved all of the conflicts in the testimony and evidence. In writing this Order, I have attempted to distill the salient issues, together with findings and conclusions necessary to their resolution. Even though I have not attempted to summarize the entirety of each witness or exhibit, 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 testimony and documentary evidence presented, and after having resolved any conflicts therein, I hereby find as follows:

1. The verbal and written stipulations of the parties are factual, accepted and incorporated by reference as if set out at length herein.

2. Based on the evidence submitted, including the sworn testimony and Cost Affidavits of Attorney Derrick Cox, I hereby award \$2,536.61 in taxable costs to the Employer/Carrier. These costs were expended in the defense of the Petitions for Benefits filed November 20, 2009 and February 15, 2010, which were voluntarily dismissed, on the record, during the May 27, 2010 Final Hearing. I find that the Employer/Carrier was the prevailing party as to those Petitions. At the Final Hearing of May 27, 2010, Attorney Parrish indicated that he believed that he and Attorney Cox had an agreement that the three existing Petitions for Benefits would be consolidated, and that the Claimant was prepared to proceed, on all theories of entitlement, at the hearing of May 27, 2010. Attorney Cox indicated that he had agreed to consolidate the November 20, 2009 and February 15, 2010 Petitions (on a single accident

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theory), and that he did not agree to consolidate the third Petition for Benefits filed February 26, 2010, which was the repetitive trauma description of accident, and that he was not prepared to try that Petition on May 27, 2010. The Hearing on the February 26, 2010 repetitive trauma Petition was scheduled for a Final Hearing of July 7, 2010, approximately six weeks later, and Attorney Parrish requested the undersigned to once again continue the May 27, 2010 Hearing, until the scheduled July 7, 2010 Hearing, and consolidate all of the Petitions. The undersigned denied that request, and advised the Claimant he could proceed on the November 20, 2009 and February 15, 2010 Petitions, and then return at a later Final Hearing, when all discovery was completed, and try the February 26, 2010 Petition. Rather than proceed in that fashion, the Claimant dismissed the November 20, 2009 and February 15, 2010 Petitions, and re-filed a Petition with a single incident description of accident on June 3, 2010. The Employer/Carrier filed their Motion to Tax Costs because the Claimant dismissed the November 20, 2009 and February 15, 2010 Petitions for Benefits. The next Final Hearing on the alternative descriptions of accident, and major contributing cause, is currently scheduled for October 28, 2010, and includes a consolidation of all Petitions filed on this case.

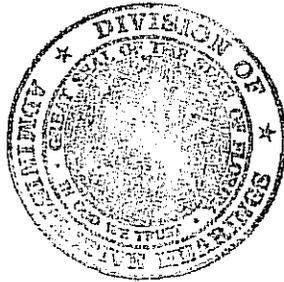
3. In awarding taxable costs to the Employer/Carrier, I find that no specific objections were made by the Claimant's attorney to the itemized taxable costs. I further note that a number of the depositions and medical records contained in the Employer/Carrier's Motion to Tax Costs were admitted by the Claimant's attorney at the May 27, 2010 trial. Therefore, it is clear to me that the items sought as taxable costs for reimbursement by the Employer/Carrier, were relevant, admissible and tendered for the May 27, 2010 proceedings. There were also no

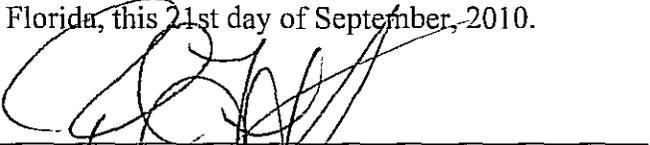
objections, made by the Claimant's attorney, that the expenses were not incurred in connection with the Employer/Carrier's defense of the claim.

4. Overall, I find that the Employer/Carrier is the prevailing party. Pursuant to Florida Statute Section 440.34(3), and the case law cited and discussed at trial (Ferrer. Fernandez and Gukenberger), I find that the Employer/Carrier is entitled to reimbursement of its taxable costs as the prevailing party. Following the voluntary dismissal, the Employer/Carrier became the prevailing party, as a matter of law.

WHEREFORE, it is hereby Ordered and Adjudged that the Claimant shall reimburse the Employer/Carrier's reasonable and related taxable costs, in the amount of \$2,536.61.

DONE and ORDERED in Melbourne, Florida, this 21st day of September, 2010.



  
Honorable Paul T. Terlizese  
Judge of Compensation Claims  
State of Florida  
Division of Administrative Hearings  
700 Babcock Street, Suite 400  
Melbourne, FL 32901  
Phone: 321-984-4866

THIS IS TO CERTIFY that the foregoing Order was entered on the 21st day of September, 2010, and that a copy thereof was e-served to Counsel listed above.

  
Judicial Assistant