

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

James Crane,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 05-007202MES
)	
Fleetwood Homes of Florida, Inc.,)	Accident date: 2/24/2005
)	
Employer,)	
)	
and)	
)	
Broadspire,)	
)	
Carrier/Service Agent.)	
_____)	

**FINAL EVIDENTIARY ORDER ON EMPLOYER/CARRIER'S
MOTION TO TAX COSTS AND MOTION TO STAY**

A hearing was held in Lakeland, Polk County, Florida on December 3, 2010 on the Employer/Carrier's Motion to Tax Costs and Motion to Stay. Present on behalf of the claimant was attorney Bradley G. Smith and present and testifying on behalf of the Employer/Carrier was attorney Derrick E. Cox. After having heard the testimony and argument presented I find as follows:

1. A hearing was held in this matter on June 7, 2007 at which the issues raised were payment of temporary total or temporary partial disability benefits from May 18, 2005 through the date of the Final Hearing and past and future psychiatric care and treatment to include payment of the bills of Dr. Charles G. Walker. The claimant also sought penalties, interest, costs and attorney fees.

2. An Order was entered on July 2, 2007 in which the Judge denied all benefits except two weeks of temporary partial disability. The Judge found that counsel for the claimant had established entitlement to an attorney's fee and reimbursement of reasonable costs for obtaining this benefit.

3. Section 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 nonprevailing party the reasonable costs of such proceedings, not to include attorney fees.”

4. The Employer/Carrier maintains that it is the prevailing party, because it prevailed on the majority of the issues before the Judge at the Final Merit Hearing. In support of its position the EC cites to *Sandvik, Inc. v. DeCoursey*, 31 So.2d 931 (Fla. 1st DCA 2010).

5. The Employer/Carrier seeks a stay of the order awarding costs to the claimant arguing that the costs awarded to the claimant should be set off against any costs awarded to the EC.

6. Section 440.34(3) does not provide for the award of costs to a party who prevails on a particular issue or claim. The costs are awarded to the party who prevails in the “proceedings” before the JCC. It is clear, to the undersigned, based on the reasoning set forth in *Sandvik*, that the EC prevailed on the majority of the issues raised in the proceedings before the Judge and as such would be considered the prevailing party in the proceedings. However, the Judge, before whom this matter was tried, awarded costs to the claimant and thus determined that the claimant was the prevailing party in the proceedings. There was no other basis on which this award of costs could have been made. No appeal was taken from this order by the EC.

7. I find that under the doctrine of res judicata the EC is bound by the findings of the Order of July 2, 2007.

8. As no costs are due to the EC the request for Stay is moot.

Wherefore it is **ORDERED AND ADJUDGED** as follows:

1. The EC’s Motion to Tax Costs is denied.
2. The EC’s Motion to Stay is denied as moot.

DONE AND MAILED this 3rd day of December, 2010, in Lakeland, Polk County, Florida.



Margaret E. Sojourner
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Lakeland District Office

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