

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

John Jones,  
Employee/Claimant,

OJCC Case No. 13-26537EDS

vs.

Accident Date: 5/6/2013

Unitek Global Services/  
Gallagher Bassett Services,  
Employer/Carrier/Service Agent.

Judge: E. Douglas Spangler

**EVIDENTIARY ORDER GRANTING EMPLOYER SERVICING AGENT'S  
MOTION TO TAX PREVAILING PARTY COSTS**

**THIS CAUSE** came on to be heard on January 16, 2015 upon the Employer/Service Agents' Motion to Tax Costs filed on October 17, 2014. The Claimant responded to the motion on October 28, 2014. The Motion attached an Affidavit in Support executed by counsel of record Derrick Cox. Mr. Cox appeared by telephone to present the motion, and testified during the hearing after being sworn by the undersigned pursuant to rule. The Claimant was represented by attorney Bill Berke who appeared in the hearing room for the hearing.

The E/SA's Motion and the attached Affidavit were admitted into evidence. The Claimant's objections as to the predicate for admission of the documentary evidence through the testimony of Mr. Cox were overruled. Based on testimony received from Mr. Cox and a review of the Affidavit and documentation presented, the undersigned concludes that the E/SA is a prevailing party pursuant to Section 440.34(3) F.S. and is entitled to taxation of costs in the amounts of \$710.88 payable by the Claimant. The reasons for this award follow:

The Claimant filed Petitions for Benefits on November 13, 2013, December 17, 2013, and February 27, 2014. A final merit hearing was scheduled to occur on October 29, 2014 to consider the merits of these petitions. On October 10, 2014 the Claimant filed a Notice of Voluntary Dismissal (NOVD) as to each of these petitions and the merit hearing was cancelled. A pretrial deposition of Dr. Igor Levy-Reis scheduled for October 13, 2014 was also cancelled. The Motion to Tax Costs followed seven days later and was filed on October 17, 2014.

The E/SA was demanding payment of: \$500.00 related to an attorney conference with Dr. Levy-Reis on July 28, 2014; \$450.00 for another conference with Dr. Levy-Reis that occurred on September 30, 2014; \$500.00 as prepayment for a deposition with Dr. Levy-Reis that was cancelled upon the NOVD being filed on October 10, 2014; and, \$400.60 for the transcript of the deposition of the Claimant. In addition, the E/SA demanded \$110.28 as costs of medical records received from four medical providers, based on \$0.50/page. (The demand originally was not limited as to the per page amount, and was based on the actual amounts paid. The adjustment was to the per page limit required by law.)

The Claimant's response to the Motion to Tax Costs filed on October 28, 2014 made two substantive legal arguments: The E/SA's demand for reimbursement of the deposition related charges and the conferences with the witnesses are not taxable because of Section 440.30 F.S.; and, telephone conferences with potential witness are not taxable under the Uniform Guidelines for Taxation of Costs.

The Claimant's two substantive arguments are not consistent with current case law. The Court in *Punsky v. Clay County Board of County Commissioner, Etc.*, 60 So.3d 1088 (Fla. 1<sup>st</sup> DCA 2011) construed the current statute, and determined that Section 440.30 F.S. does not impact the rights of prevailing parties to tax costs under Section 440.34 (3) F.S. The Court also noted in *Martin v. Code Enforcement, City of Jacksonville*, 122 So3d 438 (Fla. 1<sup>st</sup> DCA 2013) that while the Uniform Guidelines do specifically address conferences with consulting, but non testifying physicians (Dr Levy-Reis did not testify) by noting they "should not" be taxed, the Court noted this provision is advisory only, and the JCC has discretion to tax such costs if such costs are reasonably necessary to prosecute or maintain a litigated position (claim or defense). *Id.* 440.

The guidelines imply that the JCC has discretion to determine the reasonableness of the costs for which reimbursement is sought. Of the costs presented for approval, only the costs relating to the Claimant's deposition (\$400.60) and the per page costs of the medical records received from medical providers (\$110.28) are clearly within the scope of the guidelines. The issues focus on the two conferences and related charges with Dr. Levy-Reis on July 28, 2014 and September 30, 2014, the latter of which was justified as being a pre-deposition conference. The issues also focus on the prepayment of a deposition fee in the amount of \$500.00 when that

deposition never occurred. A review of the invoices for these conferences suggest that Dr. Levy-Reis has a policy to charge a flat \$250.00 for a fifteen minute (one quarter hour) conference and a separate "chart review" fee which varied from \$250.00 in the July conference to \$200.00 in the September conference.

The undersigned is mindful that the legislature has expressed its intent that medical providers testifying on depositions are limited to charging \$200.00 per hour for time spent providing that deposition. Section 440.13 (10) F.S. While that statute does not specifically apply to the charges made by Dr. Levy-Reis herein, it does serve as a reminder that it is the legislative intent that costs in connection with litigation in worker's compensation matters should be treated differently than other matters. Beyond that, it was the intent of the Court when enacting the Uniform Guidelines that the reviewing trial judge should exercise discretion in a manner that is consistent with the policy of reducing the overall costs of litigation and of keeping the costs as low as justice will permit.

Applying these concepts to the matters at hand leads the undersigned to question the three items involving charges made by Dr. Levy-Reis. As the invoices clearly indicate, Dr. Levy charged \$250.00 for a quarter hour conference, which equates with a \$1,000.00/hour charge. By any standard this hourly charge is excessive. The charges also include a flat charge relating to "chart review" of \$250.00 or \$200.00 with no indication as to what was being reviewed or how much time was being spent in completing that review. Based on the presumed hourly rate charged by Dr. Levy, the undersigned infers that the chart reviews would have taken the doctor 10-15 minutes to review in each instance. The undersigned chooses to utilize the recommended hourly rate put forth by the legislature for depositions or \$200.00/hr. to be the correct standard to apply to each of these conferences. The undersigned accepts the testimony of Mr. Cox that the two conferences were reasonably necessary to the preparation of the defenses and the anticipated testimony of the doctor in his deposition. The undersigned concludes that in each conference the doctor expended no more than ½ hour of time, which time is reimbursable at the rate of \$200/hr. or \$100.00 per conference.

Regarding the prepay fee for the deposition, the undersigned finds that the deposition did not occur and the Claimant should not have any responsibility to reimburse the E/SA for something that did not occur. The physician required a pre-pay for the deposition of \$500.00. Allegedly the physician retained the option to keep that pre-paid amount if the deposition was

cancelled inside of a certain date. Just because the Claimant dismissed the three PFB's at issue does not mean that the deposition of the doctor could not have still been taken by the E/SA. Cancellation was, therefore, strictly the E/SA's decision that was not totally the result of the NOVD, and the Claimant should not be forced to pay because of that decision.

It is therefore Ordered and Adjudged:

The Claimant shall reimburse the E/SA, as prevailing party, the sum of \$710.88.

**DONE AND ELECTRONICALLY FILED** this 21st day of January, 2015, in Ft. Myers, Lee County, Florida.

EDS/

  
Honorable E. Douglas Spangler  
Judge of Compensation Claims