

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
Melbourne District**

EMPLOYEE:

Steven McNatt
285 Lago Circle, Apt. 106
West Melbourne, FL 32904

EMPLOYER:

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

CARRIER:

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

ATTORNEY FOR EMPLOYEE:

Dennis D. Smejkal, Esquire
The Law Office of Dennis D. Smejkal, P.A.
P.O. Box 6400
Orlando, FL 32802

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

OJCC CASE NO.: 08-006904PTT

D/A: 12/29/2007

ORDER AWARDING TAXABLE COSTS

THIS MATTER came on for Evidentiary Hearing before the undersigned Judge of Compensation Claims on Thursday, October 30, 2008 in Melbourne, Florida on the Employer/Carrier's Motion to Tax Costs, filed on September 8, 2008. At the conclusion of the Evidentiary Hearing, a verbal ruling was issued with findings of fact and conclusions of law which are incorporated herein by direct reference. During the Hearing, the Claimant was represented by Dennis D. Smejkal, Esquire and the Employer/Carrier was represented by Derrick E. Cox, Esquire.

A prior Merits Hearing was held on August 22, 2008, for all issues in a Petition for Benefits filed on March 13, 2008. At the conclusion of that merits hearing, an Order was entered on September 3, 2008, denying compensability and entitlement to all issues of the claim. In that Order, I found the Employer/Carrier was entitled to costs pursuant to Florida Statute §440.34(3).

OJCC Case 08-006904PTT
Order Awarding Taxable Costs

Moreover, in that Order, I retained jurisdiction to determine the amount of costs payable to the Employer/Carrier for the proceedings, pursuant to Guckenberger v. Seminole County, 979 So.2d 407 (Fla. 1st DCA 2008).

The following exhibits were admitted into evidence:

Claimant's Exhibits:

1. The Claimant's Prehearing Information Checklist, which was admitted for identification purposes only.

Employer/Carrier's Exhibits:

1. The Employer/Carrier's Verified Motion to Tax Costs filed on September 8, 2008.
2. A composite of invoices reflecting Employer/Carrier's taxable costs.
3. The Employer/Carrier's Prehearing Information Checklist, which was admitted for identification purposes only.
4. The underlying Merits Order denying compensability of the claim dated September 3, 2008.

In making my 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. I have observed the candor and demeanor of the witnesses 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 testimony of each witness or to state non-essential facts, this does not mean that I have failed to consider all the evidence. After careful consideration of all of the evidence presented, and after having resolved any conflicts therein, I hereby find as follows:

OJCC Case 08-006904PTT
Order Awarding Taxable Costs

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

2. Based on all of the evidence as presented to me, I hereby find the Employer/Carrier is entitled to reimbursement of taxable costs from the Claimant in the amount of \$3,231.44. In reaching my decision, I have accepted the sworn testimony of Attorney Derrick E. Cox, Esquire as to the amount of taxable costs expended in the defense of the claim. I have also reviewed all of the documentary evidence submitted in support of the Employer/Carrier's taxable costs. I have also reviewed the underlying Merits Order regarding the depositions and other evidence submitted at trial. After reviewing all of the evidence, I find that the taxable costs being requested for reimbursement by the Employer/Carrier are proper.

Florida Statute §440.34(3) provides as follows:

If 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.

I find that this statutory language mandates that taxable costs be awarded to the prevailing party. Since the Employer/Carrier prevailed at the compensability hearing, the Employer/Carrier is entitled to recover the reasonable costs of such proceedings from the nonprevailing party. Moreover, the cases of Palm Beach County School District v. Ferrer, 997 So.2d 13 (Fla. 1st DCA 2008), Guckenberger v. Seminole County, 979 So.2d 407 (Fla. 1st DCA 2008) and F.A. Richard & Associates v. Fernandez, 975 So.2d 1224 (Fla. 1st DCA 2008) also support my decision in this case. I further find that the costs requested by the Employer/Carrier fall within the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions.

Counsel for the Claimant questioned three invoices for medical records obtained by the Employer/Carrier in this case. I find that reimbursement for medical records is a properly

OJCC Case 08-006904PTT
Order Awarding Taxable Costs

awardable taxable cost, given the facts of this case. I further find that these records were used in connection with the Employer/Carrier's IME and that they were specifically referenced during the deposition of the Employer/Carrier's IME. Moreover, these records were used during the cross-examination of the Claimant at the Merits Hearing. Therefore, I find that these taxable costs are properly recoverable, and were necessary for the Employer/Carrier to incur in order to defend against the claims brought by the Claimant.

Counsel for the Claimant also argues that Florida Statute §440.30 precludes the Employer/Carrier from recovering deposition costs in this case. Florida Statute §440.30 states in pertinent part:

Such fees may be taxed as costs and recovered by the Claimant, if successful in such Workers' Compensation proceedings.

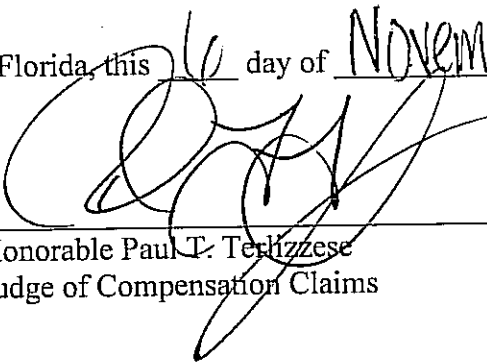
In reviewing this statutory section, I find that it provides that the Claimant is entitled to recover the costs of depositions if the Claimant is successful in a Workers' Compensation proceeding. The statutory section does not say that the Employer/Carrier cannot recover deposition costs if the Employer/Carrier is successful in a Workers' Compensation proceeding. Therefore, I do not find there is a direct conflict between Florida Statute §440.30 and Florida Statute §440.34(3). Florida Statute §440.34(3) was clearly amended in 2003 to allow the Employer/Carrier to recover costs, including deposition fees, if the Employer/Carrier prevailed in a proceeding before a Judge of Compensation Claims. This statutory interpretation has been adopted in Ferrer, Guckenberger, and F.A. Richard & Associates, since all three cases allowed the Employer/Carrier to recover deposition and other reasonable litigation costs as taxable costs. I find that the Statute, the Rules, and the case law are clear that the Employer/Carrier is entitled to recover deposition costs after prevailing in a Workers' Compensation proceeding. I find that there is no ambiguity or conflict between Florida Statute §440.30 and Florida Statute §440.34(3),

or Rule 60Q-6.124. I further find that, pursuant to the rules of statutory construction, a statutory provision should not be construed in a way that it renders meaningless or absurd any other statutory provision. If I adopted Claimant's reasoning, then I would be violating this rule of statutory construction.

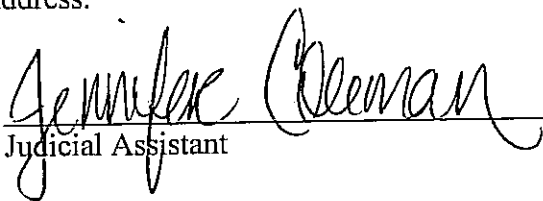
WHEREFORE, it is the Order of the undersigned Judge of Compensation Claims that the Claimant shall reimburse the Employer/Carrier the amount of \$3,231.44 within 30 days of the date of this Order.

DONE and ORDERED in Melbourne, Florida, this 6 day of November 2008.




Honorable Paul T. Terhizzese
Judge of Compensation Claims

THIS IS TO CERTIFY that the foregoing Order was entered on the 6 day of November, 2008, and that a copy thereof was sent by regular U.S. Mail to all parties noted previously at their last known address.


Judicial Assistant