

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

Randall Myers,
Employee/Claimant,

OJCC Case No. 14-025095JLL

vs.

Accident date: 7/25/2014

Pestsure Association (Massey)/Sedgwick CMS,
Employer/Carrier/Servicing Agent.

Judge: John J. Lazzara

ORDER TAXING COST

THIS MATTER came for Evidentiary Cost Hearing before the undersigned Judge of Compensation Claims on 8/5/2015 pursuant to the Employer/Carriers' Motion to Tax Cost filed on 6/8/2015, under section 440.34(3), Fla. Stat. (2009). After considering the sworn testimony of counsel for the employer/carrier, Derrick E. Cox, Esq.; reviewing and considering the merits of said motion, supporting affidavit, and statements of charges (all received in evidence); and the claimant's Response to the motion filed on 6/11/2015 (received in evidence), and after being otherwise fully advised in the premises, the undersigned Judge of Compensation Claims finds as follows:

1. The evidence indicates that a voluntary dismissal was filed by the claimant on 5/18/2015 dismissing his only petition for benefits filed 10/29/2014. The dismissal was filed the day before the claim was to be tried on 5/19/2015. Thus I find that the employer/carrier was the prevailing in regard to the aforesaid claim/petition. Costco Wholesale Corp. v. Ulett, 995 So.2d 1016 (Fla. 1st DCA 2008) (employer/carrier becomes the prevailing party when the claimant voluntarily withdraws all pending petitions for benefits);

2. Section 440.34(3), Fla. Stat., specifically provides that "[i]f any party should prevail in any proceedings before a judge of compensation claims or court, there shall be tax against the non-prevailing party the reasonable cost of such proceedings, not to include attorney's fees...";

3. Based on the evidence presented, I find that the employer/carrier was the prevailing party in regard to the above-mentioned claim. The defense to the employer/carrier's request for costs raised in the Responses was that the \$300.00 pre-deposition charge, included in Dr. D. Christian Berg, M.D., expenses for conference and deposition of \$500.00, should not be taxed as there is "no evidence of how long the conference" lasted and "whether it was an attempt by the doctor to get around the \$200, 00 deposition limit set forth in s. 440.13(10), F.S." There is no evidence that Dr. Berg charge of \$300.00 for the pre-deposition conference was for the purpose of the statutory limit on deposition cost. Additionally, Mr. Cox testified that he has knowledge that the conference actually took place with his law colleague in Tallahassee, and that the deposition lasted only one hour. This is consistent with Dr.

Berg's Fee Schedule attached to the motion and affidavit.¹ However, Mr. Cox could not say how long his law partner was in conference with Dr. Berg prior to the deposition, and;

4. Nevertheless, Mr. Cox testified that the conference took place. The TOC Fee Schedule for legal matter, received in evidence, reflects hand written notation that a "conf" was set for 11:30 and the "depo" for 12 p.m., 30 minutes apart. Even if the pre-deposition conference was less than 30 minutes, or a part thereof, the full charge is not unreasonable and such conferences are reasonable for preparation for taking the doctor's testimony for the defense of the claim. Moreover, the conference and deposition charges occurred while the claim was still pending and being litigated. Brascom v. Hillsborough County Sheriff's Office, 65 So.2d 619 (Fla. 1st DCA 2011) (JCC has discretion in awarding the cost of a pre-deposition conference). Therefore, I find that in accord with the evidence presented and guided by the Statewide Uniform Guides for Taxation of Cost in Civil Actions², all of the costs for which the employer/carrier incurred amounting to \$2,062.24, and seeks reimbursement, were necessary and reasonable to defend the claim. It is

ORDERED that the motion to tax costs is hereby **GRANTED** and the employee, Randall Myers, shall pay to the carrier, Sedgwick Claims Management Services, Inc., the prevailing party in this matter, the sum of \$2,062.24 as reimbursement for the prevailing party's cost in the defense of the aforesaid petition for benefits.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida.

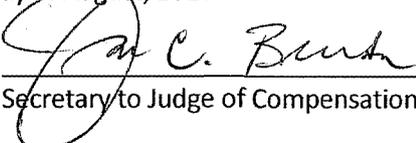




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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that the foregoing order was entered and a copy furnished electronically to counsel of record on this 7th day of August, 2015



Secretary to Judge of Compensation Claims

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¹ The charge for a one hour deposition in a workers' compensation matter is \$200.00. A 30 minute conference is a flat fee of \$300.00.

² The guides are applicable to workers' compensation matters in considering the reasonableness of an award of cost. See Florida Admin. Code 60Q-6.124(3) (e).