

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF JUDGES OF COMPENSATION CLAIMS  
FORT LAUDERDALE DISTRICT

JOHNNIE SEATON, OJCC#: 10-025597 KSP  
Claimant, D/A: 2/15/09  
v. JUDGE: KATHRYN S. PECKO

FLORIDA POWER & LIGHT CO.  
and BROADSPIRE,

Employer/Carrier.

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Johnnie Seaton, Self-Represented

Derrick E. Cox, Esquire, Counsel for Employer/Carrier

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

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**THIS CAUSE** came before the undersigned Judge of Compensation Claims on January 10, 2012 in Broward County, Florida for a duly noticed evidentiary hearing on a Motion to Tax Costs filed on behalf of the Employer/Carrier. The hearing record closed on January, 10, 2012. The Motion to Tax Costs was filed on June 16, 2011. Claimant, JOHNNIE SEATON, will be referred to by name or as "Claimant." The Employer and the Carrier will be referred to in their respective individual capacities or collectively as "E/C."

E/C's counsel, Mr. Cox, testified under oath, while Ms. Seaton, appearing on her own behalf, participated in the hearing but did not testify under oath. The undersigned takes judicial notice of the Compensation Order issued on May 12, 2011. The following documentary exhibits were admitted into evidence:

Jdg's Ex. 1	Claimant's Response To E/C Motion to Tax Costs
E/C Comp. Ex. A	Motion To Tax Costs; Affidavit in Support of Motion to Tax Costs with attachments
E/C Ex. B	Court Reporter Invoice for Deposition of Johnnie Seaton
E/C Ex. C	E/C's Response to Claimant's Response to Motion to Tax Costs

In its Motion to Tax Costs with an Affidavit in Support of Motion to Tax Costs, E/C seeks taxation of costs in the amount of \$1,622.06. E/C Ex. A. At the evidentiary hearing, E/C withdrew its request to recoup \$20.94 paid to Federal Express for an overnight charge to deliver deposition transcript. Accordingly, the amount of costs E/C currently seeks to tax is \$1,601,12.

Claimant was represented by counsel when her counsel timely filed Claimant's Response to Employer/Carrier's Motion to Tax Costs. Jdg's Ex. 1. In the response, Claimant's counsel asserted that the only costs taxable are those costs associated with the undersigned's finding that Claimant was not substantially dependent for financial support upon the deceased employee and that she and the decedent were not living apart for justifiable cause. Claimant's counsel specifically objected to the costs associated with the depositions of Laura Miller, Simone Stewart Seaton, and Christopher McCluskey. Claimant's counsel objected to the \$29.00 charge for "Meeting Bridge," which was used to facilitate the telephone deposition of Simone Stewart Seaton, because no receipt was attached. Finally, Claimant's counsel objected to a charge for medical records in the amount of \$17.24 as having no bearing on the issue that was tried at final hearing.

The undersigned considered all of the documentary and testimonial evidence submitted at the January 10, 2012 evidentiary hearing, as well as the prior Compensation Order, notwithstanding that there may not be an express recitation of same within the four corners of the instant final evidentiary order, before rendering the following findings and conclusions:

1. The undersigned has jurisdiction over the parties and the subject matter.

2. In regard to taxation of costs prior to 2003, Section 440.34(3), Fla. Stat. provided in relevant part that "[i]f the Claimant should prevail in any proceedings before a judge of compensation claims or court, there shall be taxed against the employer/carrier the reasonable costs of such proceedings...." (emphasis added). In 2003, the Florida Legislature amended Section 440.34(3), Fla. Stat. to provide that "[i]f 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...." (emphasis added). Thus, this legislative change in 2003 provided statutory authority for employers and carriers to recoup from the nonprevailing employee/ claimant reasonable costs incurred in proceedings held before a judge of compensation claims (JCC) or a court.

"The determination of what constitutes taxable costs rests within the sound discretion of the JCC." McArthur Farms v. General Accident Ins., 586 So. 2d 1273 (Fla. 1st DCA 1991); see also Shackleford v. CTL Distribution, 25 So. 3d 667 (Fla. 1st DCA 2010); Hillsborough County Sheriff's Office v. Hilsman, 23 So.3d 743 (Fla. 1st DCA 2009); Morris v. Dollar Tree Store, 869 So. 2d 704 (Fla. 1st DCA 2004). The costs associated with a witness' testimony admitted at final hearing is subject to taxation against the nonprevailing party, regardless of whether the JCC actually relied on said testimony in rendering his/her decision. Moore v. Hillsborough County School Board, 987 So. 2d 1288 (Fla. 1st DCA 2008); Raska v. Glasgow Contracting, Inc., 588 So. 2d 307 (Fla. 1st DCA 1991). The fact that a cost listed is not supported by an invoice or receipt does not preclude the taxation of that cost. Hilsman, supra.

3. E/C denied in its entirety Claimant's request for death benefits. At final hearing on April 20, 2011, E/C stipulated that Claimant herein, Johnnie Seaton, was the deceased employee's legal wife, pursuant to the marriage certificate and the Order on Petition to

Determine Beneficiaries issued on March 29, 2010 in the Circuit Court in and for Broward County, Probate Division. Notwithstanding this stipulation, in order for Claimant to be entitled to the death benefits as expressly required by Sections 440.16 and 440.02(26), Fla. Stat. (2009), Claimant had the burden to prove at the April 20, 2011 final hearing the threshold issue that she was substantially dependent upon the deceased employee for financial support and that she and the deceased employee lived apart for justifiable cause. The undersigned rejected Claimant's position in the May 12, 2011 Compensation Order.

4. The following costs will not be taxed because they were not probative of the threshold issue of substantial financial dependence and justifiable cause for living apart which was the subject matter of the final hearing held on April 20, 2011:

Depo. Laura Miller	\$125.60
Depo. Simone Stewart Seaton	\$362.70
Meeting Bridge	\$ 29.00
Christopher McCluskey	\$154.20
IOD Medical Records	\$ 17.24

TOTAL DENIED COSTS \$688.74

5. The following costs will be taxed against the Claimant because they were 1) probative of the threshold issue of substantial financial dependence and justifiable cause for living apart and/or 2) were not objected to in Claimant's Response:

Depo. Johnnie Seaton	\$488.65
Depo. Denise Jaffke	\$119.30
Depo. Kristen Colombani	\$281.93
Milwaukee County Courthouse	\$ 22.50

TOTAL COSTS TAXED \$912.38

Based upon the foregoing, it is hereby

**ORDERED AND ADJUDGED** that costs in the amount of \$912.38 are taxed against the Claimant, Johnnie Seaton, in favor of E/C, and Johnnie Seaton is directed to pay \$912.38 to E/C.

**DONE AND ORDERED** in Chambers, Lauderdale Lakes, Broward County, Florida.



*Kathryn S. Pecko*

KATHRYN S. PECKO  
JUDGE OF COMPENSATION CLAIMS

**CERTIFICATE OF SERVICE**

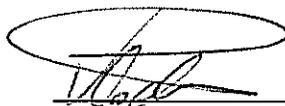
**I HEREBY CERTIFY** that a true copy of the foregoing Order was entered by the  
**Judge of Compensation Claims** and a copy was served by electronic transmission on  
January 11<sup>th</sup> 2012 to the parties' counsel of record or by  
mail if parties are unrepresented.

**Copy Mailed to Claimant at address listed below:**

**Johnny Seaton**

**3526 W. Highland Blvd**

**Milwaukee, Wisconsin 53208**



**Secretary to the Judge of Compensation Claims**