

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

EMPLOYEE:

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Winter Haven, FL 33880

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ATTORNEY FOR

EMPLOYER/CARRIER:

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Winter Park, FL 32789

CARRIER:

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Jacksonville, FL Office
P.O. Box 14482
Lexington, KY 40512

OJCC #: 05-034288 MHH

D/Accident: 09/03/03

FINAL ORDER AWARDING COSTS

A final hearing was held before Douglas Spangler, Judge of Compensation Claims in Lakeland, Polk County, Florida on September 13, 2007. On November 15, 2007, Judge Spangler entered an order denying all claims litigated at the aforementioned final hearing. As the Employer/Carrier prevailed at final hearing, the Employer/Carrier filed a Motion to Tax Costs on November 7, 2008. A cost hearing was held on February 2, 2009 to determine the extent of the Claimant's responsibility for cost reimbursement to the Employer/Carrier. The following are the court's findings:

1. Lakeland District is the proper venue and this court has jurisdiction over the parties and the subject matter.
2. The Employer/Carrier prevailed at the final hearing held on September 13, 2007.
3. All exhibits were marked for identification and were accepted into evidence at the cost hearing.

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4. In determining what costs are reasonably reimbursable to the Employer/Carrier, the court has considered Section 440.34, Florida Statutes, the relevant case law as well as the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. The court recognizes that the guidelines generally recommend reimbursement of costs which were reasonably necessary to defend or prosecute a case at the time the actions precipitating the cost occurred.
5. **DEPOSITIONS:** The Statewide Uniform Guidelines for Taxation of Costs in Civil Actions indicate that the original and one copy of a deposition as well as the court reporter's *per diem* for all depositions should be taxed. This general principle appears to have been confirmed in *Moore v. Hillsborough County School Board*, 789 So.2d 1288, where the First District Court of Appeal held that a Judge of Compensation Claims need not specifically rely on a deposition or medical record in awarding or denying benefits for the cost of a deposition to be reimbursable. It is sufficient that the testimony, *i.e.* deposition, was used in a way to support or deny benefits to justify taxation of the cost associated with the testimony. This court finds that with one exception, the cost of all depositions taken by the Employer/Carrier or attended by the Employer/Carrier shall be reimbursed. The depositions taken by or attended by the Employer/Carrier were reasonable and necessary to the defense of the alleged industrial accident of December 1, 2005, and were considered by the court in deciding the compensability of the claims brought forth by the Claimant at final hearing.
6. **DOCUMENTS:** The Statewide Uniform Guidelines for Taxation of Costs in Civil Actions allows for the reimbursement of the cost of copies of documents filed with the court and which are reasonably necessary to assist the court in reaching a conclusion or the cost of copies obtained in discovery even if the copies are not used at trial. The documents secured by counsel for the Employer/Carrier were listed with specificity and were necessary to the preparation of the defense in this case. The court finds that securing medical records of the Claimant is reasonable discovery and shall be reimbursed to the Employer/Carrier at the Claimant's expense.
7. All objections not specifically addressed herein are denied as unfounded.

8. **EXCLUDED COSTS:**

- a. The Employer/Carrier has requested reimbursement for the cost of securing an expert medical examination. The EMA was performed by Dr. Richard Gray at the request of the Employer/Carrier. Within the Employer/Carrier's Motion to Tax Costs, the Employer/Carrier requested reimbursement of payment for, "4/24/07 EMA with Dr. Richard Gray, doctor fee, \$1,000.00." Section 440.34(3), Florida Statutes, establishes **general** entitlement to reimbursement of costs to the prevailing party. However, Section 440.19(9)(f), Florida Statutes, is more specific regarding entitlement to reimbursement of the costs associated with the performance of an expert medical examination. In determining which statute to apply where an apparent conflict exists between two statutory provisions, it is fundamental that the more specific statute is primary. The Claimant contends that Section 440.13(9)(f), Florida Statutes, does not provide for reimbursement of EMA costs by the Claimant to the Employer/Carrier. Section 440.13(9)(f), Florida Statutes, specifically states, "If the employee prevails in a dispute as determined in an order by a Judge of Compensation Claims based upon the expert medical advisor's findings, the employer or carrier shall pay for the costs of such expert medical advisor." There is no corresponding provision requiring that the Claimant reimburse the Employer/Carrier the cost of an EMA in the event the Employer/Carrier prevails at trial. A basic tenet of statutory construction is that the legislature only intends that the specifically stated contents of a statute be enforced *i.e.* that the Employer/Carrier must reimburse a Claimant the cost of a Claimant requested EMA where the Claimant prevails at trial. The statute does not state that the Employer/Carrier has a right to reimbursement of an Employer/Carrier requested EMA. The legislature's silence on the issue is equivalent to actual rejection of the Employer/Carrier's right to cost reimbursement for the cost of the performance of an expert medical examination. This court will not deviate from the basic principles of statutory interpretation. Further, where a Judge of Compensation Claims is not specifically granted authority to award a benefit or take an action, the Judge of Compensation Claims does not have jurisdiction to so act. Therefore, the cost of performing the expert

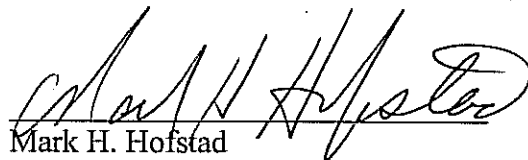
medical examination, in the amount of \$1,000.00, is excluded from reimbursement. Dr. Gray was deposed on August 27, 2007. Relative to that deposition, Dr. Gray charged a fee of \$400.00 for giving the deposition and the court reporter charged \$206.65. The deposition was not concluded on August 27, 2007. The deposition was concluded on September 7, 2007. That resulted in additional court reporter charges of \$220.45. The deposition costs are part and parcel of the expert medical examination and are also excluded.

9. The Employer/Carrier requested reimbursement of costs in the amount of \$3,253.09. The costs excluded relative to EMA and the deposition of the EMA physician, Dr. Gray, total \$1,827.10. The Claimant is responsible for reimbursing the Employer/Carrier \$1,425.99 in taxable costs.

Wherefore, it is ORDERED and AJUDGED that:

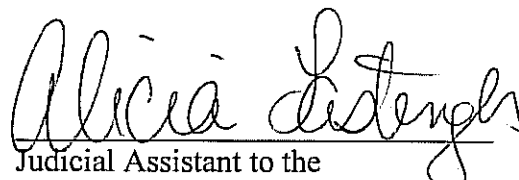
1. The Claimant shall reimburse the Employer/Carrier \$1,425.99 in taxable costs.

DONE AND ORDERED in Chambers in Lakeland, Polk County, Florida on this ___ day of MAR 31 2009, 2009.


Mark H. Hofstad
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing order was entered on this ___ day of MAR 31 2009, 2009, by the Judge of Compensation Claims, and that a copy thereof was sent to the parties identified above.


Alicia Lestegh
Judicial Assistant to the
Judge of Compensation Claims