

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

Yamileth Alvarez,
Employee/Claimant,

OJCC Case No. 11-014660MES

vs.

Accident date: 1/4/2010

On-Site Services, Inc./02 HR, and Thrive
HR FL1, LLC/Sunz Insurance,
Employer/Carrier/Service Agent.

Judge: Margaret E. Sojourner

EVIDENTIARY ORDER AWARDING COSTS

A hearing was held in this matter in Lakeland, Polk County, Florida on the EC's motion to tax costs. Attorney Bradley G. Smith was present on behalf of the claimant and attorney Gregory D. White was present on behalf of the EC.

EC Exhibits:

1. Verified Motion to Tax Costs with attachments filed at docket number (DN) 179.

Claimant's Exhibits:

2. Response to Motion to Tax Costs filed at DN 184.

Findings of Fact and Conclusions of Law:

1. I have jurisdiction over the parties and the subject matter.
2. Venue is in Polk County, Florida.
3. The claimant filed a PFB on November 5, 2013 and voluntarily dismissed that PFB on April 30, 2014. The EC seeks costs as the prevailing party. The claimant argues that an award of costs will be premature as the dismissed petitions may or have been re-filed and thus it has not been established that the EC is the prevailing party. The First DCA rejected this argument in *Palm Beach County v. Ferrer*, 990 So.2d 13 (Fla. 1st DCA 2008). I find that the EC is the prevailing party and is entitled to recover costs.
4. The PFB filed November 5, 2013 sought temporary total and temporary partial disability from November 2, 2012 and continuing. The claimant objects to all costs incurred prior to the filing of the petition as irrelevant to the issues set forth in the petition. These costs include

the depositions and conferences with Dr. Friedman and Dr. Pandya. Counsel for the EC testified that the depositions of the physicians were relevant to the issues being tried. These physicians were listed as witnesses on the pretrial. I find that it is not the timing of the discovery that is controlling but whether or not the discovery was relevant to the issues raised. As the EC testified to the relevance the costs are taxable.

5. I overrule the objection to item 1. The statute limits deposition testimony to \$200.00 an hour but does not so limit other expert conferences.

6. I sustain the objection to item 2. The charge is for \$600.00 per hour for a deposition and this is limited by statute. I find that \$200.00 is appropriate.

7. I overrule the objection to item number 9. A review of the invoice establishes that the charge is for deposition with medical records review and not for the deposition alone.

Wherefore it is ordered and adjudged as follows:

1. The claimant shall pay to the EC costs in the amount of \$2,473.00.

DONE AND ORDERED this 4th day of September, 2014, in Lakeland, Polk County, Florida.



Margaret E. Sojourner
Judge of Compensation Claims
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