

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

EMPLOYEE:

Florence Duke
4206 Urbino Street
Sebring, FL 33872

ATTORNEY FOR EMPLOYEE:

Christopher R. Mank, Esquire
Post Office Drawer 1089
Lakeland, FL 33802

EMPLOYER:

Select PEO
1511 North Westshore Blvd., #900
Tampa, FL 33607

**ATTORNEY FOR
EMPLOYER/CARRIER:**

Gregory D. White, Esquire
1560 Orange Avenue, Suite 500
Winter Park, FL 32789

CARRIER:

Providence Property and Casualty
P.O. Box 2009
Frisco, TX 75034

OJCC #: 08-033470MHH

D/Accident: 04/10/2008

ORDER ON EVIDENTIARY HEARING

On April 6, 2009, the Employer/Carrier filed a Motion to Enforce Settlement. An evidentiary hearing on the Motion to Enforce Settlement was held on September 2, 2009 before Mark H. Hofstad, Judge of Compensation Claims in Lakeland, Polk County, Florida. The Claimant was represented by Christopher R. Mank, Esquire. The Employer/Carrier was represented by Gregory D. White, Esquire.

The following exhibits were accepted into evidence at the evidentiary hearing:

Claimant Exhibits

1. Cover letter and settlement documents.

Employer/Carrier Exhibits

1. Motion to enforce settlement.
2. Settlement correspondence.
3. Deposition of Florence Duke taken May 14, 2009.

Findings of fact and conclusions of law

The parties were scheduled to mediate this case on March 11, 2009. On the date of the scheduled mediation, the Claimant was contacted by an associate attorney with the firm that represented her. Settlement was discussed and the Claimant clearly authorized the attorney to settle her worker compensation case for \$11,000.00. This fact was confirmed in the Claimant's deposition testimony as well as the Claimant's testimony at the evidentiary hearing.

The Claimant contends that she should not be bound by the settlement agreement in that she felt rushed into the settlement, that she ultimately felt that the settlement amount was insufficient and that she objected to certain terms contained within the general release prepared by the Employer/Carrier.

The Claimant had no further contact with her counsel after authorizing the settlement of her case for \$11,000.00. Upon receipt of the general release, she discharged her attorney.

The court finds that the claimant is bound by the settlement agreement. The Claimant was represented by counsel at the time she settled her workers' compensation claim. The Claimant clearly authorized her counsel to settle her workers' compensation case for \$11,000.00. The Claimant testified that the settlement agreement provided that she would net \$11,000.00. The Claimant understood that, in exchange for the sum of \$11,000.00, she would no longer be entitled to receive worker compensation benefits. The claimant testified that she was not forced to settle her case. The Claimant had the opportunity to proceed to mediation where she could have discussed the settlement of her case with her counsel and with an independent mediator. Upon settlement of the case, counsel for the Claimant faxed counsel for the Employer/Carrier a letter confirming that the case was settled in its entirety. The agreement specifically indicated that the total settlement amount would be \$13,750.00 out of which counsel for the Claimant would receive a statutory guideline fee of \$2,125.00 plus costs in the amount of \$625.00. The Claimant would receive \$11,000.00, the amount which she previously authorized her attorney to settle the case for.

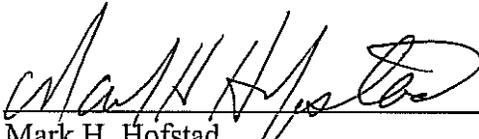
There were no contingencies involved in the oral settlement agreement. There is no evidence of coercive behavior by any party, and there is no evidence of mistake of fact relative to the settlement of this case. The essential terms of the agreement were clear and not vague. The evidence confirmed a clear meeting of the minds.

The court finds that the Claimant knowingly settled her worker compensation case for \$11,000.00. However, the Claimant is not directed to sign the settlement documents as proposed by the Employer/Carrier as the documents contain conditions and requirements not agreed to by the Claimant.

Wherefore, it is ORDERED and AJUDGED that:

1. The Employer/Carrier's Motion to Enforce Settlement is granted in part.
2. The Claimant shall be paid \$11,000.00, the amount for which she agreed to settle her claim.
3. The Employer/Carrier shall provide the court with the required child support documents.

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


Mark H. Hofstad
Judge of Compensation Claims

CERTIFICATE OF SERVICE

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

Judicial Assistant to the
Judge of Compensation Claims