

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

Stanley Jones,)	
Employee/Claimant,)	
)	Judge: Neal P. Pitts
vs.)	
)	OJCC Case No. 09-002353NPP, 09-028457NPP
Royalty Foods, Inc., and Royalty Foods,)	
Inc./Gallagher Bassett Services, Inc., Gallagher)	Accident date: 6/30/2008, 2/11/2008
Bassett Services, Inc.,)	
Employer/ Carrier/Servicing Agent.)	
_____)	

FINAL EVIDENTIARY ORDER ON EC'S MOTION TO DISMISS

This cause having come on for hearing on the 7th day of March, 2011, pursuant to the EC's Motion To Dismiss, filed with DOAH on January 3, 2011, to which the pro se claimant filed no written response. In this motion, the EC seeks the dismissal of petitions for benefits filed with DOAH on August 5, 2010 (09-2353) and September 8, 2010 (09-28457) on the grounds that the claimant has not complied with the Order Taxing Costs in favor of the EC in the amount of \$7,162.21.

PROCEDURAL BACKGROUND:

1. The claimant filed a petition for benefits on November 5, 2009 seeking pain management treatment for the claimant's right shoulder condition. The EC defended this petition on various grounds, including that the compensable accident was not and is not the MCC of the

claimant's right shoulder condition and need for treatment. Based upon a conflict in the medical evidence, Dr. Robert Murrah was appointed as the EMA.

2. Dr. Murrah evaluated the claimant and published a report concluding that the compensable accident was not and is not the MCC of the claimant's right shoulder condition and/or the need for medical treatment. This issue went to a merits' hearing on June 23, 2010 before Judge Lazzara who entered a Final Order on June 24, 2010 accepted Dr. Murrah's opinions and found that the compensable accident is not the MCC of the claimant's right shoulder condition and need for treatment.
3. Following the entry of the Final Order, Judge Lazzara entered on November 5, 2010 the Order Taking Costs. This order assessed \$7,162.21 in costs against the claimant associated with the EC's defense of the above claim seeking treatment for the right shoulder condition.
4. On July 14, 2010, claimant's counsel sought leave to withdraw from his representation of the claimant. This motion was granted by order entered on August 5, 2010. The claimant then filed a petition for benefits with

DOAH on September 8, 2010 seeking authorization of continued treatment with Dr. Tutorino and refill of various prescriptions.

5. The evidence that the hearing held on March 7, 2011 established that the claimant has not paid any of the \$7,162.21 in costs assessed against him in the order entered by Judge Lazzara. According to the claimant, he is indigent, unemployed, and homeless; and therefore, lacks the ability to pay any or all of the judgment.

At the hearing, the following evidence was marked and admitted as follows:

JUDGE'S EXHIBITS:

1. Final Order entered on June 24, 2010; and
2. Order Taxing Costs entered on November 5, 2010.

Based upon the evidence, I make the following findings of fact and conclusions of law:

1. I have jurisdiction of the parties and the subject matter.
2. The EC requests the undersigned to exercise his discretion, pursuant to §440.24(4), Fla. Stat., to dismiss the pending petition because of the failure of the claimant to have complied with the Order Taxing Costs.

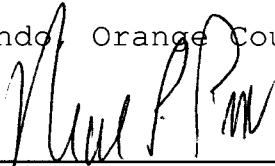
3. I find by the greater weight of the evidence that the claimant is not willfully refusing to comply with the Order Taxing Costs. Rather, he simply does not have the financial ability to pay the outstanding costs. His attorney has withdrawn from representation; leaving him to prosecute his current claim in an unrepresented capacity.
4. There is no dispute that the claimant suffered a compensable left shoulder injury arising from this compensable accident. He received surgery for this condition. According to the Final Order, his authorized physician had placed him at MMI on November 18, 2008 with a 4% impairment rating for the left shoulder condition described in the order as an impingement and partial tear of the rotator cuff.
5. The claimant then sought treatment for a right shoulder condition. The claimant contended that the right shoulder condition began hurting during therapy for the left shoulder. This treatment was sought via a petition for benefits filed on November 5, 2009. This claim was denied as discussed above. The consequence to the claimant for unsuccessfully pursuing his claim for treatment of a right shoulder condition is the entry of a cost judgment against

him for \$7,162.21; a judgment which he clearly cannot pay, nor can the EC collect against him.

6. The claimant has received extensive treatment for his left shoulder condition. He also was provided with authorized pain management and psychiatric treatment associated with the compensable left shoulder condition.
7. The claimant is now unrepresented. If the claimant is allowed to continue to pursue his claims for medical treatment raised in the August 5, 2010 and the September 8, 2010 petitions, he will have to meet the burden of proof to establish by medical testimony that the compensable accident remains the MCC of the need for the pain management and psychiatric treatment. Whether the claimant can meet this burden as an unrepresented party is problematic, at best.
8. In the interim, the EC will incur more legal fees and incur more costs in defending these claims which in the end may be decided adverse to the claimant because of insufficient evidence to sustain his burden of proof. Should the claimant not prevail on the outstanding petitions, he will again be subjected to a cost judgment; one which he will not be able to pay nor the EC able to collect.

9. In balancing the equities between the parties, the undersigned concludes that it is in the interest of justice that he exercise his discretion under §440.24(4), Fla. Stat. and grant the motion of dismiss until the claimant is able to pay the outstanding cost judgment. Wherefore, the petitions for benefits filed on August 5, 2010 and on September 8, 2010 are hereby dismissed.

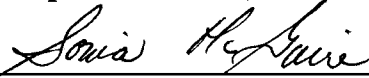
DONE AND ORDERED in Orlando Orange County, Florida.



Neal P. Pitts,
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THIS IS TO CERTIFY that the foregoing Order was entered and that a copy was sent by electronic mail to counsel and by U.S. mail to the claimant on this 10th day of March, 2011.



Secretary to Neal P. Pitts,
Judge of Compensation Claims

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