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

Walter Neil Employee/Claimant,	)	
vs.	)	
Thrive HR FL 1 LLC, and SUNZ Insurance and USIS Employer/Carrier,	)	OJCC Case No. 10-013546 Judge: David Langham

ORDER GRANTING EMPLOYER/CARRIER'S MOTION TO COMPEL SETTLEMENT

THIS CAUSE was heard before the undersigned at Melbourne, Brevard County, Florida on March 29, 2011 before the undersigned. The Employer/Carrier filed a Motion to Enforce Settlement on February 8, 2011. This trial occurred forty-nine (49) days after the Motion was filed.

The undersigned appeared for trial by use of the videoteleconference system of the Office of Judges of Compensation Claims. The Claimant was present in Melbourne on his own behalf. Claimant is referred to herein as "respondent." Gregory White, Esq. was present in Melbourne on behalf of the Employer/Carrier, which is referred to herein as "movant."

Submitted into evidence at the Final Hearing were the following documents, each accepted and placed into evidence without any objection except where noted, as joint exhibits, Claimant's exhibits, or E/C exhibits, with each individual exhibit being further identified by a numerical designation as follows:

JUDGE'S EXHIBITS MARKED FOR THE RECORD:

1. None.

JOINT EXHIBITS:

1. None.

MOVANT'S EXHIBITS:

1. The E/C Motion and a letter from Mark Hill was marked as Movant's exhibit "1" and accepted as evidence.

RESPONDENT'S EXHIBITS:

1. None.

In making the determinations set forth below, I have attempted to distill the salient facts together with the findings and conclusions necessary to resolve this claim. I have not attempted to painstakingly summarize the substance of the parties' arguments, nor the support given to my conclusions by the various documents submitted and accepted into evidence; nor have I attempted to state nonessential facts.

Because I have not done so does not mean that I have failed to consider all of the evidence. In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all evidence submitted to me. I have considered arguments of counsel for the respective parties, and analyzed statutory and decisional law of Florida.

Based upon the parties' stipulations and the evidence and testimony presented, I find:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim. Jacobsen v. Ross Stores, 882 So. 2d 431 (Fla. 1st DCA 2004); Czopek v. Great Chemicals and GAB, 778 So.2d 996 (Fla. 1st DCA 2000); Barefoot v. Sears Roebuck & Co., 650 So.2d 1036 (Fla. 1st DCA 1995). See also, Middlesex Corp. v. Patterson, Florida First District Court of Appeal, Case number 1D02-3989, Opinion withdrawn by Order dated August 22, 2003.
2. It is notable that there are multiple references in this record to "court." It is common knowledge among workers' compensation practitioners that this Office is not a "court" but an administrative hearing office of the executive branch, which possesses "quasi-judicial" statutory authority. See, Millinger v. Broward County Mental Health & Risk Mgmt., 672 So.2d 24, 27 (Fla. 1996). It is presumed that the references to "court" in the various pleadings are actually, though perhaps inadvertent and/or uninformed, references to this administrative Office.
3. Any and all issues raised by way of the Petitions for Benefits ("PFB"), but which issues were not dismissed or tried at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the Claimant and, therefore, are Denied and Dismissed with prejudice. See, Betancourt v. Sears Roebuck & Co., 693 So.2d 680 (Fla. 1st DCA 1997); see also, McLymont v. A Temporary Solution, 738 So.2d 447 (Fla. 1st DCA 1999).

   The prevailing party may be entitled to costs. F.A. Richard & Assocs. v. Fernandez, 975 So.2d 1224 (Fla. 1st DCA 2008); Palm Beach Cty. Sch. Dist. v. Ferrer, 990 So.2d 13 (Fla. 1st DCA 2008); Morris v. Dollar Tree Store, 869 So.2d 704 (Fla. 1st DCA 2004).
4. The Florida Evidence Code ("FEC") controls admissibility of evidence in workers' compensation proceedings.[1] The Division of Administrative Hearings, Office of the Judges of Compensation Claims ("OJCC") has promulgated and adopted Rules of Procedure, Section 60Q6.101, et. seq. Florida Administrative Code governs the procedural aspects of this claim.[2] Those Rules are referred to herein as "OJCCRP."

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[1] See, e.g., Martin Marietta Corp. v. Roop, 566 So.2d 40 (Fla. 1st DCA 1990); Odom v. Wekiva Concrete Products, 443 So.2d 331 (Fla. 1st DCA 1983).

[2] On February 23, 2003, the OJCC enacted procedural rules, designated 60Q-6.101, et seq. The Florida Supreme Court recognized the enactment and efficacy of those rules in repealing the former Florida Rules of Workers' Compensation Procedure. See, In Re Florida Rules of Workers' Compensation Procedure 891 So.2d 474 (Fla. 2004).

5. The order has two purposes. One is to afford the parties the opportunity for appellate review as appropriate. For that purpose, this order need contain only "findings of ultimate material fact . . . necessary to support the mandate." Garcia v. Fence Masters, Inc., and AIG Claims Services, Inc., 16 So.3d 200 (Fla. 1st DCA 2009). Each trial order of the Office of the Judges of Compensation Claims also potentially provides the parties and the public with the reasoning that resulted in the outcome reflected. It is often the case that this purpose requires more discussion than what is required by the Court for their purposes. I therefore expound upon my perceptions of the evidence more fully than perhaps necessitated for appellate review. In respect to the Court's admonition in Garcia, however, I have striven to clearly state the ultimate findings upon which my decisions ultimately rest. The absence from this order of recitation of specific testimony or documentary quotes should therefore be interpreted as a conscious effort to comply with the Court's admonition. Whether mentioned in this order specifically or not, the undersigned has carefully reviewed and considered all evidence admitted at trial. Certainly, any party has ample opportunity to address any perceived deficiency in the extent to which this order enunciates findings. See, Holland v. Cheney Brothers, 22 So. 3d 648 (Fla. 1st DCA 2009).

6. The parties' stipulations and agreements are accepted, adopted and made an order of the Office of the Judge of Compensation Claims.

7. On February 8, 2011 the Employer/Carrier filed a *Motion to Enforce Settlement*. Therein, the E/C alleges that the parties agreed to settle this claim for seven thousand five hundred and no/100 dollars. The E/C alleges that this settlement included an attorney fee of $1,375.00 and costs not to exceed $10.00 payable to Claimant's former counsel Mark Hill, and satisfaction of a lien imposed by Claimant's former counsel Charles Smith in the amount of $459.75. The terms of the alleged settlement are detailed in a January 26, 2011 correspondence from Claimant's then, but now former, counsel Mark Hill to Mr. Gregory White, the E/C counsel. The Claimant argues that the settlement should not be compelled because the E/C cannot assure him that the settlement amount will be sufficient for the treatment of his injuries. Claimant also argues that the letter from Mr. Hill to Mr. Gregory should be disregarded because it does not include any reference to when or even if Mr. Hill spoke with Claimant about this alleged agreement.

8. The settlement of a worker's compensation claim in Florida has evolved through the course of various amendments to Fla. Stat. §440.20. Some such amendments have been more fundamental than others. Pursuant to the statutory language in effect prior to 2001, see, Fla. Stat. §440.20(12)(1991), workers' compensation settlement provisions made no distinction regarding whether or not a Claimant was represented by counsel. The statutory provisions of Fla. Stat.

§440.20(12)(a)(1991) included the Legislature's express policy that settlements of future benefits were allowed only if such lump sum would "definitely" aid the claimant's rehabilitation, or was "clearly" in the claimant's best interests.[3] Such determinations would necessarily be findings of fact made by the Judge of Compensation Claims. Further, settlements of workers' compensation benefits under any of the subsections of Fla. Stat. §440.20(12)(1991) required the entry of an order of the Judge of Compensation Claims. The requirements regarding some forms of settlement further required that the Judge of Compensation Claims consider the parties' agreement in the course of a hearing regarding issues involved in the settlement. Fla. Stat. §440.20(12)(b)(1991). Clearly therefore, prior to 2001, either party could elect to withdraw from any settlement agreement until that agreement was considered by the Judge of Compensation Claims, specific factual findings were made, and an order approving the proposed settlement was entered.[4] The Supreme Court explained in Brantley the rationale for allowing either party to withdraw from a proposed settlement of workers' compensation benefits, prior to approval of the Judge, as follows:

> A lump sum, washout settlement cannot be accomplished without the approval of a deputy commissioner, or judge of industrial claims as the official is now known. He must decide whether it is for the best interest of claimant. He must approve the amount and decide on the ultimate discharge of the liability of the employer. In arriving at his judgment the deputy is directed to make such investigations as he considers necessary to determine whether such a final disposition will aid the rehabilitation of the injured worker and is clearly for his best interest. F.I.C. Rule No. 16(e). The responsibility of the deputy in connection with so-called washout settlements is not merely a perfunctory, mechanical act. It requires the exercise of quasi-judicial judgment. It is an essential concomitant of the compensation awarding process. Sullivan v. Mayo, 121 So.2d 424 (Fla. 1960); Russell v. Bass, 107 So.2d 281 (Fla. 1st DCA 1958); Westinghouse Elec. Supply Co. v. Reagan, 159 So.2d 222 (Fla. 1964).

Thus, the role of the Judge of Compensation Claims in consideration of settlement of entitlement to future compensation benefits was, prior to the 2001 amendments, "quasi judicial" and an "essential" element of the process. Therefore either party could withdraw from any settlement of future benefits, prior to the approval thereof by the Judge, prior to 2001.

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[3] Fla. Stat. §440.20(12)(a)(1991) provides in part: "It is the stated policy for the administration of the workers' compensation system that it is in the best interests of the injured worker that he or she receive disability or wage-loss payments periodically. Lump-sum payments in exchange for the employer's or carrier's release from liability for future payments of compensation, death benefits, and rehabilitation expenses other than for medical expenses shall be allowed only under special circumstances, as when the claimant can demonstrate that lump-sum payments will definitely aid in his or her rehabilitation or are otherwise clearly in his or her best interests . . . ."

[4] Rogers v. Concrete Sciences, Inc., 394 So.2d 212 (Fla. 1st DCA 1981); Brantley v. ADH Bldg. Contractors, Inc., 215 So.2d 297 (Fla. 1968).

9. A substantial alteration to settlement of worker's compensation claims was enacted by the Florida Legislature in 2001. Since that time, the settlement of claims has been divided into two subsets: (1) settlement of claims in which the injured worker, or "claimant" is represented by counsel, Fla. Stat. §440.20(11)(c)[5]; and (2) settlement of claims in which the claimant is not represented by counsel, Fla. Stat. §440.20(11)(a)[6] and (b).[7] The role and responsibility, and thus the jurisdiction, of the Office of the Judges of Compensation Claims is therefore demonstrably and markedly different in the settlement of claims in which the injured worker is represented by counsel versus claims in which the injured worker is unrepresented. Clearly, settlements effected between unrepresented injured workers and their employer or carrier are not effective until a "joint

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[5] (c) Notwithstanding s. 440.21(2), ***when a claimant is represented by counsel***, the claimant may waive all rights to any and all benefits under this chapter by entering into a settlement agreement releasing the employer and the carrier from liability for workers' compensation benefits in exchange for a lump-sum payment to the claimant. The settlement agreement requires approval by the judge of compensation claims only as to the attorney's fees paid to the claimant's attorney by the claimant. The parties need not submit any information or documentation in support of the settlement, except as needed to justify the amount of the attorney's fees. Neither the employer nor the carrier is responsible for any attorney's fees relating to the settlement and release of claims under this section. Payment of the lump-sum settlement amount must be made within 14 days after the date the judge of compensation claims mails the order approving the attorney's fees. Any order entered by a judge of compensation claims approving the attorney's fees as set out in the settlement under this subsection is not considered to be an award and is not subject to modification or review. The judge of compensation claims shall report these settlements to the Deputy Chief Judge in accordance with the requirements set forth in paragraphs (a) and (b). Settlements entered into under this subsection are valid and apply to all dates of accident. (emphasis added).

[6] "(11)(a) ***When a claimant is not represented by counsel***, upon joint petition of all interested parties, a lump-sum payment in exchange for the employer's or carrier's release from liability for future medical expenses, as well as future payments of compensation expenses and any other benefits provided under this chapter, shall be allowed at any time in any case in which the employer or carrier has filed a written notice of denial within 120 days after the employer receives notice of the injury, and the judge of compensation claims at a hearing to consider the settlement proposal finds a justiciable controversy as to legal or medical compensability of the claimed injury or the alleged accident." (emphasis added).

[7] "(b) ***When a claimant is not represented by counsel***, upon joint petition of all interested parties, a lump-sum payment in exchange for the employer's or carrier's release from liability for future medical expenses, as well as future payments of compensation and rehabilitation expenses, and any other benefits provided under this chapter, may be allowed at any time in any case after the injured employee has attained maximum medical improvement. An employer or carrier may not pay any attorney's fees on behalf of the claimant for any settlement, unless expressly authorized elsewhere in this chapter. A compensation order so entered upon joint petition of all interested parties shall not be subject to modification or review under s. 440.28. However, a judge of compensation claims is not required to approve any award for lump-sum payment when it is determined by the judge of compensation claims that the payment being made is in excess of the value of benefits the claimant would be entitled to under this chapter. The judge of compensation claims shall make or cause to be made such investigations as she or he considers necessary, in each case in which the parties have stipulated that a proposed final settlement of liability of the employer for compensation shall not be subject to modification or review under s. 440.28, to determine whether such final disposition will definitely aid the rehabilitation of the injured worker or otherwise is clearly for the best interests of the person entitled to compensation and, in her or his discretion, may have an investigation made. The joint petition and the report of any investigation so made will be deemed a part of the proceeding. An employer shall have the right to appear at any hearing pursuant to this subsection which relates to the discharge of such employer's liability and to present testimony at such hearing." (emphasis added).

petition" of the parties is considered by the Office of the Judges of Compensation Claims and specific factual findings are made by the Judge. Therefore, it is clear that an agreement by an un represented injured worker cannot be effective or binding prior to the consideration and approval of the Joint Petition by the Judge. The reasoning and holding of Brantley therefore control the efficacy of settlements which occur between unrepresented injured workers and their employers, even continuing under the 2001 amendments to the law. That is not the factual predicate which is presented to me in this case, however. I find that the reasoning and holding of Brantley are not applicable to the facts of the case before me. The function of the Judge of Compensation Claims pursuant to Fla. Stat. §440.20(11)(c), (d), and (e)(2001)(e.g. in situations in which all parties are represented by counsel) does not involve the Judge in determinations of what is or is not in the best interest of the injured worker or the employer/carrier. A Judge of Compensation Claims is "vested only with certain limited quasi-judicial powers relating to the adjudication of claims for compensation and benefits." Smith v. Piezo Tech. & Prof'l Adm'rs, 427 So. 2d 182, 184 (Fla. 1983). A Judge of Compensation Claims "has no authority or jurisdiction beyond what is specifically conferred by statute." Farhangi v. Dunkin Donuts, 728 So. 2d 772, 773 (Fla. 1st DCA 1999). Further, "unlike a court of general jurisdiction, a judge of compensation claims does not have inherent judicial power but only the power expressly conferred by chapter 440." McFadden v. Hardrives Constr., Inc., 573 So. 2d 1057, 1059 (Fla. 1st DCA 1991). The role of the Judge of Compensation Claims in settlements which involve represented parties is therefore specifically limited to the powers and responsibilities set forth in Fla. Stat. §440.20(11)(c), (d), and (e)(2001). I find that as to these settlements the JCC's role is confined, and is restricted to two (2) express statutory functions. First, the Judge must verify the appropriateness of any attorney fee paid in conjunction with the settlement.[8] Second, the Judge must verify that, if any child support arrearage exists, appropriate accommodations have been made for some allocation of settlement funds to satisfy or reduce that arrearage.[9] Thus, the role of the Judge described by the Court in Brantley continues after the 2001 amendments only as regards settlements entered by unrepresented Claimants, but that role is markedly decreased regarding settlements entered by represented Claimants. I therefore find that written settlements may be enforced even when no

[8] Fla. Stat. §440.20(11)(c) provides "The settlement agreement requires approval by the judge of compensation claims only as to the attorney's fees paid to the claimant's attorney by the claimant."

[9] Fla. Stat. §440.20(11)(d) provides: "d) 1. With respect to any lump-sum settlement under this subsection, a judge of compensation claims must consider at the time of the settlement, whether the settlement allocation provides for the appropriate recovery of child support arrearages. An employer or carrier does not have a duty to investigate or collect information regarding child support arrearages."

Order has been entered approving same.[10] Of course this is subject to the determinations regarding the appropriateness of attorney's fees and child support arrangements.

10. As of January 26, 2011 the Claimant/Respondent believed that there had been a meeting of the minds to settle this claim. How that conclusion was reached is less clear. However, the evidence supports that Mr. Hill was Claimant's attorney on January 26, 2011. As such, he was the agent or at a minimum the "apparent agent" of Claimant. He communicated a written and unequivocal confirmation of settlement that day and transmitted it to the Employer/Carrier/Movant.

11. Settlements are highly favored as a means to conserve judicial resources, and will be enforced when it is possible to do so. See, Robbie v. City of Miami, 469 So.2d 1384, 1385 (Fla. 1985). I have concluded that any negotiations to settle this case were effectively concluded in January 2011 and the parties had an agreement. Mr. Hill testified without equivocation or contradiction that he had the authority of Claimant/Respondent to enter this agreement. Claimant testified that he did not know or that he could not remember whether he granted that authority, but he did not contradict Mr. Hill's testimony.

12. Settlements are construed in accordance with the rules for interpretation of contracts. See, Robbie, 469 So.2d at 1385; Long Term Mgmt., Inc. v. Univ. Nursing Care Ctr., Inc., 704 So.2d 669, 673 (Fla. 1st DCA 1997). When a contract for settlement is clear and unambiguous, this Office is required to enforce the contract according to its plain meaning. See, Limehouse, 797 So.2d at 17; see also, BMW of N. Am., Inc. v. Krathen, 471 So.2d 585 (Fla. 4th DCA), review denied, 484 So.2d 7 (Fla. 1986). It is not the role of this Office to rewrite a contract to make it more reasonable for one of the parties or to relieve a party from what turns out to be a bad bargain. See, Barakat v. Broward County Hous. Auth., 771 So.2d 1193, 1195 (Fla. 4th DCA 2000). See also, Feldman v. Kritch, 824 So.2d 274 (Fla. 4th DCA 2002). Therefore, while sympathetic to Claimant/Respondent's concerns at trial as to whether the agreement provides sufficient compensation, this Office has no role in the determination of that question.

13. I conclude that the testimony of Mr. Hill is credible and conclusive. I accept and adopt that testimony and conclude that he had authority to settle this case, that he did settle this case on behalf of Claimant, then his client, and that he communicated the terms of that settlement to the Employer/Carrier. The Employer/Carrier has proven that the parties reached a settlement of this case. I accept that Claimant may not remain convinced that this agreement was/is in his best interest, but that hesitancy to formalize the settlement contract is an instance of remorse or regret

[10] I decline to address the efficacy of oral agreements addressed in Middlesex Corporation as that issue is not before me.

about the settlement that was reached. This is not an instance in which any legal basis has been demonstrated to avoid the settlement agreement.

Wherefore, it is ORDERED AND ADJUDGED:

1. The Employer/Carrier's *Motion to Enforce Settlement* is GRANTED.
2. This settlement and this order affect only the Claimant/Respondent's rights and obligations under Chapter 440, Florida Statutes.
3. The Employer/Carrier shall immediately submit proof of Child Support Arrearage and appropriate attorney fee data sheets for documentation of the fees in this matter.
4. Upon submission of the documentation of child support and attorney's fees, the matter will be considered for approval of the settlement agreement reached, as documented in the January 2011 correspondence in evidence.

DONE AND ORDERED and electronically transmitted to counsel in Chambers, Pensacola, Escambia County, Florida, this 31st day March 2011.

JUDGE OF COMPENSATION CLAIMS

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