

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

Mark Burgess,)	
Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 06-037509DSR, 07-
Buckhead Beef Florida/Royalty Foods, and)	003158DSR
Sentry Insurance, Sentry Claims,)	
Employer/ Carrier/ Servicing Agent.)	Accident dates: 8/2/2006, 4/21/2006
_____)	

ORDER ON EMPLOYER/CARRIER'S MOTION TO TAX COSTS

This cause was heard before the undersigned at Sebastian, Indian River County, Florida on June 13, 2012, upon the Employer/Carrier's Motion to Tax Costs filed March 29, 2012. A Response was filed by the Claimant on April 11, 2012. Bradley G. Smith, Esq., was present on behalf of the Claimant. Timothy Stanton, Esq., was present on behalf of the Employer/Carrier.

The following documentary items were received into evidence:

1. All documents required by Rule 9.180 (Court's Exhibit #1).
2. Claimant's Response to the Employer/Carrier's Verified Motion to Tax Costs filed April 11, 2012 (Claimant's Exhibit #1).
2. Employer/Carrier's Verified Motion to Tax Costs filed March 29, 2012 (Employer/Carrier's Exhibit #1).
3. Petition for Benefits filed October 21, 2011 (Employer/Carrier's Exhibit #2).
4. Notice of Voluntary Dismissal filed March 21, 2012 (Employer/Carrier's Exhibit #3).

No live testimony was presented at the hearing. In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the documentary evidence, I have attempted to resolve all of the conflicts in the evidence. Based on the foregoing and the applicable law, I make the following findings:

1. On October 21, 2011, the Claimant filed a Petition for benefits seeking permanent total disability benefits from December 1, 2009, and continuing.

2. On March 21, 2012, the Claimant filed a Notice of Voluntary Dismissal of the Petition for Benefits.

3. Pursuant to F.S. 440.34(3), and F.A. Richard & Associates and Palm Beach County School Board v. Fernandez, 975 So.2d 1224 (Fla. 1st DCA 2008), the Employer/Carrier is entitled to reimbursement of costs as the prevailing party.

4. The Employer/Carrier is considered the prevailing party in reference to the claim for permanent total disability benefits and is entitled to reimbursement of their taxable costs by the Claimant, Costco Wholesale Corporation v. Ulett, 995 So.2d 1016 (Fla. 1st DCA 2008).

5. The Employer/Carrier's taxable costs, pursuant to the Statewide Uniform Guideline for Taxation of Costs in Civil Actions are \$5,241.30.

6. The Claimant agreed that the Verified Motion was sufficient as to the costs incurred.

7. The Claimant asserts that the Motion to Tax is Costs is premature as the permanent total disability claim is still outstanding. Additionally, the Claimant asserts that there is a long history of litigation in this claim and that fee and costs are owed to the Claimant from the Employer/Carrier.

8. Based on the totality of the evidence before me I find that the Employer/Carrier is entitled to the reimbursement of their taxable costs as the prevailing party in this matter. The Claimant filed a Petition for Benefits on October 21, 2011. The Employer/Carrier was forced to defend the permanent total claim by securing independent medical evaluations, depositions, and hiring a vocational expert. The Claimant voluntarily dismissed the claim on March 21, 2012, just 5 days prior to the scheduled Final Hearing on March 26, 2012. The Employer/Carrier filed their Motion to Tax Costs on March 29, 2012, and the Claimant did not file a Petition for Benefits seeking permanent total disability again until 11:47 on June 13, 2012, when the Hearing on the Motion was scheduled for 3:00 on that same date.

9. I find that the costs as delineated in the Verified Motion are taxable costs and that the Claimant shall pay to the Employer/Carrier \$5,241.30 as reimbursement of the costs.

WHEREFORE, it is hereby ORDERED and ADJUDGED that:

The Claimant shall pay to the Employer/Carrier \$5,241.30 as reimbursement of the taxable costs in this proceeding.

.DONE AND ORDERED IN CHAMBERS AND ELECTRONICALLY MAILED

this 15th day of June, 2012, in Sebastian, Indian River County, Florida.



Donna S. Remsnyder
Judge of Compensation Claims

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