

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

**EMPLOYEE:**

Ana Briones  
1730 Haverhill Road  
Deltona, FL 32725

**EMPLOYER:**

SOI  
P.O. Box 241448  
Charlotte, NC 28224

**CARRIER:**

CCMSI  
2600 Lake Lucien Drive, Suite  
225  
Maitland, FL 32751

**ATTORNEY FOR EMPLOYEE:**

Dale Albright, Esquire  
McBride, Scicchitano & Leacox,  
P.A.  
800 North Magnolia Avenue,  
Suite 1800  
Orlando, FL 32803

**ATTORNEY FOR EMPLOYER/CARRIER:**

Gina M. Jacobs, Esquire  
Hurley, Rogner, Miller, Cox,  
Waranch and Westcott, P.A.  
1560 Orange Avenue, Suite 500  
Winter Park, FL 32789

**OJCC CASE NO.:** 12-000447TWS

**D/A:** 8/16/2011

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**ORDER ON EMPLOYER/CARRIER'S MOTION TO TAX COSTS**

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AFTER DUE AND PROPER NOTICE, this cause came on to be heard at an evidentiary hearing in Orange County, Florida on Tuesday, June 11, 2013. Present at the hearing was Attorney Gina Jacobs for the Employer/Carrier and Attorney Dale Albright for the Claimant.

*This order addresses the Employer/Carrier's Motion to Tax Costs filed with DOAH on April 22, 2013.*

**Documentary Evidence:**

#1 Employer/Carrier: Motion to Tax Costs w/supporting Affidavit

of Costs.

After hearing argument from both parties and reviewing the evidence presented, it was determined that the Employer/Carrier is entitled to taxable costs based on the following: The claimant filed a Petition for Benefits on January 9, 2012 seeking temporary benefits from November 2, 2011 to present and continuing; an adjustment of Average Weekly Wage; authorization of carpal tunnel surgery as recommended by Dr. Hoffen; compensability; attorney's fees, penalties, interest and costs. The merits hearing regarding the subject Petition for Benefits was scheduled for November 14, 2012. Counsel for the Claimant filed a Voluntary Dismissal of the Petition for Benefits on September 27, 2012.

Pursuant to Sec. 440.34(3), Fla. Stat. (2012), if any party should prevail in any proceeding before a judge of compensation claims or a court, there shall be taxed against the non-prevailing party the reasonable costs of such proceedings, not to include attorney's fees.

The First District Court of Appeal has interpreted this Section to allow an Employer/Carrier to obtain taxable costs from the Claimant when Petitions for Benefits are dismissed prior to the hearing. Palm Beach County School District v. Ferrer, 990 So.2d 13 (Fla. 1st DCA 2008); Costco Wholesale Corporation v. Ulett, 995 So.2d 1016 (Fla. 1st DCA 2008). Whether the dismissal was taken

with or without prejudice has no bearing on this result. Id.

During this evidentiary hearing, Counsel for the Claimant conceded that the Employer/Carrier was the prevailing party as alleged thus agreeing to entitlement however challenged the relatedness and reasonableness of a few of the listed costs.

Counsel for the Employer/Carrier argued that because the Claimant did not file a response within 30 days after the Motion was served, that such objections were untimely and waived under 60Q-6.124(3)(b). Under this section, absent good cause for failure to file a timely and specific response, results in acceptance of the allegations in the Motion as true. Counsel for the Claimant did not have good cause for not responding to the Motion therefore such objections by Counsel for the Claimant were not accepted.

However, the Statewide Uniform Guidelines for Taxation of Costs must be considered in determining the reasonableness of an award of cost reimbursement. See 60Q-6.124(3)(e). In applying the Guidelines, a few of the costs listed in the Affidavit in Support of the Motion to Tax Costs were not awarded. The items excluded are as follows:

Under Section II(A)(1) of the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, mediation fees and expenses may be taxed. Reimbursement is discretionary. This intermediate expense of \$500.00 has been excluded. If the Claimant was not made aware that she could incur this expense over a free state mediation

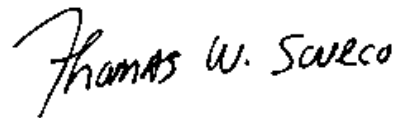
conference, then it would not be reasonable for the Claimant to reimburse the Carrier for this. The telephone conference with Dr. Frank Denoff for \$300.00 was excluded as this was not a conference held in connection with expert testimony or a deposition. Such non-expert, non-testifying witness fees must be excluded under Section III(B). Lastly, the deposition fee from Dr. Bruce Hoffen was reduced to \$200.00 to reflect the statutory hourly rate pursuant to Sec. 440.13(10).

Reimbursement of the remaining costs was awarded. Expenses related to pre-deposition conference of testifying witnesses were awarded as they fit under Section III(B) in that costs related to counseling non-testifying experts are not reimbursable so This Court interprets the rule to permit such reimbursement were applicable to testifying experts. Dr. Halperin and Dr. Denoff were deposed for such a purpose therefore the costs were awarded.

WHEREFORE, it is hereby **Ordered** and **Adjudged** that the Employer/Carrier's Motion to Tax Costs is awarded in the amount of **\$4,636.88**.

**DONE and ORDERED** in Orlando, Orange County, Florida.

This 18<sup>th</sup> day of June, 2013



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**Thomas W. Sculco**  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
Orlando District Office  
[www.jcc.state.fl.us](http://www.jcc.state.fl.us)

**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that the Order was entered by the Judge of Compensation Claims and was electronically served on the parties through their respective attorneys.

 Digitally signed by Marla  
Miller  
Date: 2013.06.18 11:35:00  
-04'00'

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Assistant to Judge Sculco  
Orlando District