

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

Barbara Hale,	)	
Employee/Claimant,	)	OJCC Case No. 10-006059NSW
	)	
vs.	)	Accident date: 7/14/2008
	)	
Gulf Coast Enterprises d/b/a Lakeview Center,	)	Judge: Nolan S. Winn
Inc./United States Fire Insurance Company,	)	
Employer/ Carrier/ Servicing Agent.	)	
_____	)	

**FINAL EVIDENTIARY ORDER**

THIS CAUSE came on to be heard in Pensacola, Escambia County, Florida on 02-14-11 upon E/C's Motion to Tax Costs. The Motion was filed 11-30-10. E/C's Pre-Trial Stipulation was filed 01-01-11. The Final Hearing occurred seventy-six (76) days after the Motion was filed and this Order was entered one (1) day thereafter. Julie Bixler, Esq. was present in Pensacola on behalf of the E/C. Claimant, pro se, was present in Pensacola.

Submitted into evidence at the Final Hearing were the following documents, each accepted, identified and placed into evidence without objection except where noted, as Judge's Exhibits, Joint Exhibits, Claimant's Exhibits, or E/C Exhibits, as follows:

**JUDGE'S EXHIBITS MARKED FOR THE RECORD:**

- #1. E/C's Pre-Trial Stipulation filed 01-06-11.
- #2. E/C's Motion to Tax Cost filed 11-30-10.
- #3. Petition for Benefits filed 03-16-10.
- #4. E/C's Response to Petition for Benefits filed 03-26-10.
- #5. Mediation Conference Report dated 06-14-10.
- #6. Claimant's Voluntary Dismissal filed 06-08-10.

**JOINT EXHIBITS:**

None.

**CLAIMANT'S EXHIBITS:**

None.

**E/C's EXHIBITS:**

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.
2. The parties' stipulations and agreements, set forth in the pretrial compliance questionnaire are accepted, adopted and made an order of the Office of the Judge of Compensation Claims.
3. Any and all issues raised by way of the Motion to Tax Costs, 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, Scotty's Hardware v. Northcutt, 883 So.2d 859 (Fla. 1<sup>st</sup> DCA 2004).
4. Claimant filed a Petition for Benefits on 03-16-10. E/C conducted various discovery and at Mediation,

Claimant agreed to dismiss her Petition which she did on 06-08-10. E/C thereafter filed its Motion to Tax Costs seeking to recover \$265.51 expended in securing medical records from five (5) providers.

5. Section 440.34(3), Florida Statutes (2006), states, "[i]f any party should prevail in any proceedings before a judge of compensation claims or court, there shall be taxed against the non-prevailing party the reasonable costs of such proceedings, not to include attorney's fees." One of the first rules of statutory construction is that the plain meaning of the statute is controlling. Jackson County Hosp. Corp. v. Aldrich, 835 So.2d 318, 328-29 (Fla. 1st DCA 2002). Based on the plain meaning of section 440.34(3), the prevailing party is entitled to the reasonable costs it incurred in the proceedings before the JCC. Whether the dismissal was taken with or without prejudice has no bearing on this result. See Rose Printing Co., Inc. v. Wilson, 602 So.2d 600, 603 (Fla. 1st DCA 1992).

6. A defendant generally becomes the prevailing party when a plaintiff dismisses its action. Thornber v. City of Fort Walton Beach, 568 So.2d 914, 919 (Fla. 1990); Stuart Plaza, Ltd. v. Atl. Coast Dev. Corp. of Martin County, 493 So.2d 1136, 1137 (Fla. 4th DCA 1986). See also, Palm Beach County Sch. Dist. v. Ferrer, 990 So.2d 13, 14-15 (Fla. 1st DCA 2008). E/C is therefore the prevailing party here. As such, it is entitled to recover its reasonable costs.

7. While there was no dispute regarding medical records from four (4) of the five (5) medical providers from whom E/C secured medical records, Claimant contended records from Gastroenterology Associates, where she underwent a colonoscopy, were irrelevant to defense of her claim involving an injury to her right foot. E/C contended as Claimant testified in her deposition she had seen Dr. Frye at Gastroenterology Associates, it was necessary to obtain his records to determine what, if any information therein, was relevant to the defense of the claims asserted in the Petition.

8. In determining what costs are properly taxable, the court is guided by the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions (Guidelines). Section I.B.2. of those Guidelines provides that costs of copies obtained in discovery, even if not used at trial, should be reimbursed as taxable costs. However, Section III.C. provides that costs incurred in connection with any matter which costs were expended on matters or materials not reasonably calculated to lead to the discovery of admissible evidence may not be taxed as costs.

9. While it may appear medical records of a gastroenterologist would not likely contain relevant information regarding a foot injury, appearances may be deceiving and E/C had no means of knowing what information may be contained therein until such records were secured and reviewed. It is not until such records have been secured and reviewed that E/C will know (1) whether the same contain evidence it may utilize in its defense or (2) whether such records will lead E/C to other relevant and admissible evidence it may utilize in its defense. In either case, the E/C is entitled to recover the costs incurred in securing medical records from all five sources, including Gastroenterology Associates. It is therefore,

**ORDERED AND ADJUDGED** that:

1. E/C's Motion to Tax Costs is **GRANTED**. E/C shall have and recover from Claimant, Barbara Hale, costs in the sum of \$265.51, for all of which let execution issue.

**DONE, MAILED AND ELECTRONICALLY MAILED** this 14th day of February, 2011, in Pensacola, Escambia County, Florida.



---

Nolan S. Winn  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
Pensacola District Office  
700 South Palafox Street, Suite 305  
Pensacola, Florida 32502  
(850)595-6310  
[www.jcc.state.fl.us](http://www.jcc.state.fl.us)

Barbara Hale  
705 W. Lee Street  
Pensacola, Florida 32501

Julie C. Bixler, Esquire  
[jbixler@hrmcw.com](mailto:jbixler@hrmcw.com)  
[mdodson@hrmcw.com](mailto:mdodson@hrmcw.com)