

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
WEST PALM BEACH DISTRICT

EMPLOYEE:
Leonor Ramirez
5877 Apache Drive
Greenacres, FL 33463

ATTORNEY FOR EMPLOYEE:
Unrepresented

EMPLOYER:
Xanitos, Inc.
3809 West Chester Pike, Suite 210
Newtown Square, PA 19073

**ATTORNEY FOR
EMPLOYER/CARRIER:**
Julie C. Bixler, Esquire
Hurley, Rogner, Miller, Cox,
Waranch and Westcott, P.A.
603 North Indian River Drive, Suite 200
Fort Pierce, FL 34950

CARRIER:
North River Insurance Company
P.O. Box 958426
Lake Mary, FL 32795

OJCC CASE NO.: 12-025252SHP
D/A: 6/11/2012

ORDER ON EMPLOYER/CARRIER'S MOTION TO TAX COSTS

AFTER DUE AND PROPER NOTICE TO THE PARTIES, this cause came to be heard in Palm Beach County, Florida on April 11, 2014. This Order resolves the Employer/Carrier's Motion to Tax Costs filed pursuant to section 440.34(3), Fla. Stats. and Rules of Procedure for Workers' Compensation Adjudications, Rule 60Q-6.124(3). The Claimant, Leonor Ramirez, was unrepresented and presented to hearing *pro se*, on her own behalf. The Employer/Carrier, Xanitos, Inc. and North River Insurance Company, were represented by Julie C. Bixler, Esquire.

DOCUMENTARY EVIDENCE

The following documentary items were submitted into evidence:

EMPLOYEE/CLAIMANT'S EXHIBITS:

None.

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Order on Employer/Carrier's Motion to Tax Costs
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EMPLOYER/CARRIER'S EXHIBITS:

1. Employer/Carrier's Motion to Tax Costs filed on 3/3/14 with attachments;
2. Composite Exhibit consisting of Notice of Denial dated 4/11/13, Petition for Benefits (PFB) filed 4/16/13, and Response to PFB filed 4/22/13;
3. Mediation Conference Report and Agreement dated 7/9/13;
4. Final Compensation Order dated 11/19/13;
5. Composite Exhibit of invoices consisting of:
 - a. Invoice from Preferred Orthopedics in amount of \$200.00 for conference with Dr. Chalal;
 - b. Invoice from National Orthopedics & Neurosurgery in amount of \$200.00 for conference with Dr. Matuszak;
 - c. Invoice from Preferred Orthopedics in amount of \$200.00 for deposition of Dr. Chalal;
 - d. Invoice from National Orthopedics & Neurosurgery in amount of \$200.00 for deposition Dr. Matuszak;
 - e. Invoice from Healthport in amount of \$436.49 for medical records from St. Mary's Medical Center;
 - f. Invoice from Magna Legal Services in amount of \$277.59 for deposition transcript of Dr. Chalal;
 - g. Invoice from Magna Legal Services in amount of \$158.38 for deposition transcript of Dr. Matuszak;
 - h. Invoice from Magna Legal Services in amount of \$360.00 for court reporter attendance at deposition of Leonor Ramirez/claimant;

- i. Invoice from Magna Legal Services in amount of \$218.11 for deposition transcript of Leonor Ramirez/Claimant;
- j. Invoice from Magna Legal Services in amount of \$391.50 for interpreter for claimant deposition;
- k. Invoice from Can We Talk Translation in amount of \$345.00 for interpreter for Final Hearing;
- l. Invoice from Infocopy Systems Inc. in amount of \$97.15 for medical records from Wellington Regional Medical Center;
- m. Invoice from Doctor's Choice Medical Center in amount of \$28.25 for medical records from Doctor's Choice Medical Center;
- n. Invoice from CVS Caremark in amount of \$50.00 for medical records from CVS;
- o. Invoice from Wellington Internal Medicine in amount of \$2.00 for medical records from Dr. Marull;
- p. Invoice from Florida Blue in amount of \$45.00 for medical records from BCBS FL;
- q. Invoice from The Imaging Center of WPB in amount of \$25.00 for medical records from The Imaging Center of WPB;
- r. Invoice from Comprehensive Pain Care of South Florida in amount of \$22.50 for medical records from Dr. Goldfarb;
- s. Invoice from Infocopy Systems Inc. in amount of \$11.72 for medical records from Good Samaritan Hospital.

LIVE TESTIMONY

1. Leonor Ramirez, claimant;
2. Julie C. Bixler, Esquire.

STIPULATIONS

1. I have jurisdiction of the parties and the subject matter of this claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon consideration of the evidence presented, testimony/argument of the claimant, and testimony/argument of counsel for the Employer/Carrier, I find as follows:

1. The claimant filed Petitions for Benefits (PFBs) against the Employer/Carrier in this matter on 11/2/12, 12/6/12, 1/4/13, 2/11/13, and 4/16/13. Voluntary dismissals were subsequently filed on 1/25/13 and 3/1/13 which served to dismiss all PFBs except for the PFB filed on 4/16/13;
2. On 4/11/13 the Employer/Carrier prepared a Denial/DWC-12;
3. On 4/22/13 the Employer/Carrier filed a Response to the 4/16/13 PFB;
4. Both the 4/11/13 Denial and 4/22/13 Response filed by the Employer/Carrier provided that "the claim is being denied in its entirety pursuant to Florida Statute 440.09(4) due to the claimant's violation of Florida Statute 440.105 by her knowing and/or intentional misrepresentations and/or misleading statements regarding her past relevant medical history in order to obtain workers' compensation benefits";
5. The parties attended State Mediation on 7/9/13 and reached an impasse;
6. On 7/26/13 all parties presented before the JCC for a Live Pre-Trial Hearing. Claimant advised the Court of her desire to maintain her 4/16/13 PFB at that time. The Employer/Carrier completed their portion of the pretrial stipulations on 7/24/13.

Claimant completed her portion on 8/5/13. The Employer/Carrier later filed an Amendment to their portion of pretrial on 8/16/13. An Order was entered approving pretrial on 8/6/13;

7. Subsequently, depositions of various medical providers were obtained and various documents were filed with the Court in support of the Employer/Carrier's position at Final Hearing. All of the above was done in preparation for Final Hearing scheduled for 11/12/13;
8. On 11/12/13 all parties presented to Final Hearing as scheduled. Final Hearing was conducted on this date;
9. On 11/19/13 the JCC entered an Order in favor of the Employer/Carrier, denying the claimant her requested benefits. This Order also found in favor of the Employer/Carrier as to their affirmative defense of misrepresentation;
10. Pursuant to § 440.34(3), Florida Statutes, "If any party should prevail in any proceedings before a judge of compensation claims or court, there shall be taxed against the nonprevailing party the reasonable costs of such proceedings, not to include attorney's fees";
11. The Employer/Carrier prevailed at the Final Hearing in this matter on 11/12/13 and seek costs in the amount of \$3,268.69. A sworn affidavit of the Adjuster, Mrs. Chandra Esser, was entered into evidence by the Employer/Carrier, and testimony was provided by counsel for the Employer/Carrier delineating a breakdown of all costs sought to be taxed as detailed below:

Preferred Orthopedics of the Palm Beaches	\$200.00	Conference with Dr. Chalal
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National Orthopedics & Neurosurgery	\$200.00	Conference with Dr. Matuszak
Preferred Orthopedics of the Palm Beaches	\$200.00	Deposition of Dr. Chalal
National Orthopedics & Neurosurgery	\$200.00	Deposition Dr. Matuszak
Healthport	\$436.49	Medical Records from St. Mary's Medical Center
Magna Legal Services	\$277.59	Deposition transcript of Dr. Chalal
Magna Legal Services	\$158.38	Deposition transcript of Dr. Matuszak
Magna Legal Services	\$360.00	Court Reporter Attendance at Deposition of Leonor Ramirez
Magna Legal Services	\$218.11	Deposition transcript of Leonor Ramirez/Claimant
Magna Legal Services	\$391.50	Interpreter for Claimant Deposition
Can We Talk Translation	\$345.00	Interpreter for Final Hearing
Infocopy Systems Inc.	\$97.15	Medical Records from Wellington Regional Medical Center
Doctor's Choice Medical Center	\$28.25	Medical Records from Doctor's Choice Medical Center
CVS Caremark	\$50.00	Medical Records from CVS
Wellington Internal Medicine	\$2.00	Medical Records from Dr. Marull
Florida Blue	\$45.00	Medical Records from BCBS FL

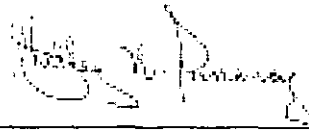
The Imaging Center of WPB	\$25.00	Medical Records from The Imaging Center of WPB
Comprehensive Pain Care of South Florida	\$22.50	Medical Records from Dr. Goldfarb
Infocopy Systems Inc.	\$11.72	Medical Records from Good Samaritan Hospital
TOTAL	<u>\$3,268.69</u>	

12. Counsel for the Employer/Carrier provided live testimony that all of the above listed costs were reasonably necessary and useful in the prosecution of the claims filed by the claimant, as well as reasonably necessary and useful in the prosecution of the Employer/Carrier's affirmative defense of misrepresentation;
13. Although the claimant did provide testimony on her behalf at the Hearing, she failed to provide any challenge or objection to any of the costs claimed by the Employer/Carrier;
14. I accept the evidence and testimony presented by Julie Bixler, Esquire that the Employer/Carrier incurred litigation costs in the amount of \$3,268.69. I also find that these costs incurred were reasonable and necessary in the prosecution of the claims and affirmative defenses asserted in this matter.

WHEREFORE, it is ORDERED and ADJUDGED that:

1. The Employer/Carrier's Motion to Tax Costs is GRANTED;
2. The claimant shall reimburse the Employer/Carrier taxable costs incurred in this matter in the amount of \$3,268.69.

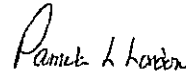
DONE and ORDERED in West Palm Beach, Palm Beach County, Florida, this 15 day
of April, 2014.



HONORABLE SHELLEY H. PUNANCY
Judge of Compensation Claims
Division of Administrative Hearings
Office of Judge of Compensation Claims
One Clearlake Centre
250 S. Australian Avenue, Suite 200
West Palm Beach, FL 33401
(561) 650-1040

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was entered and a true copy was furnished by electronic transmission on this 15 day of April, 2014, ~~2013~~ to counsel of record, or to the parties by U.S. Mail, if unrepresented.



Judicial Assistant to Judge Punancy

CLAIMANT:

Leonor Ramirez
5877 Apache Drive
Greenacres, FL 33463

ATTORNEY FOR THE EMPLOYER/CARRIER:

Julie C. Bixler, Esquire
jbixler@hrmcw.com
spzdirc@hrmcw.com