

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

Daisy M. Bruton,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 06-011650JTF
)	
Orange County Convention)	Accident date: 2/24/2005
Center,)	
)	Judge: Neal P. Pitts
Employer,)	
)	
and)	
)	
Alternative Service Concepts,)	
LLC,)	
)	
Carrier/Servicing Agent.)	

FINAL EVIDENTIARY ORDER

This cause came on for an evidentiary hearing before the undersigned Judge of Compensation claims on July 26, 2010 in Orlando, Orange, Florida, upon the E/C/'s Motion to Tax Costs filed with DOAH on May 4, 2010 and the claimant's Response to Employer/Carrier's Motion to Tax Costs filed with DOAH on May 27, 2010. The claimant was represented at the hearing by Carrie Hixson, Esquire. The employer was represented by Kimberly De Arcangelis, Esquire. No live testimony was received during the hearing.

The claim for determination at the hearing was:

1. Taxation of reasonable costs as the prevailing party pursuant to section 440.34(3), Fla. Stat. against the claimant.

The defenses raised by the Employee were the following:

1. claimant seeks a reduction in the amount of certain costs claimed as outlined in her Response To EC's Motion To Tax Costs.

The following documents were admitted into evidence:

Judge's Exhibits

1. Final Compensation Order rendered on April 2, 2010;
2. Deposition Transcript, with attachments, of Dr. Mark Beckner, taken on December 9, 2009;
3. Deposition Transcript, with attachments, of Dr. Paul Maluso, taken on October 21, 2009; and
4. EC's Supplemental Pretrial Stipulation filed with DOAH on February 12, 2010.

Employer's Exhibits

1. Employer/Carrier's Motion to Tax Costs filed with DOAH on April 4, 2010, which included copies of the invoices incurred by the employer and for which taxation of costs against the claimant is being sought.

Claimant's Exhibits

1. Claimant's Response to Employer/Carrier's Motion to Tax Costs filed with DOAH on May 27, 2010.

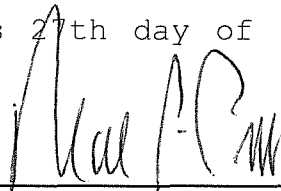
In making my findings of fact, I have carefully considered and weighed all of the evidence presented to me. Although I may not reference each piece of evidence presented by the parties, I have carefully considered all the evidence and the exhibits in making my findings of fact. I have resolved all conflicts in the evidence, both live testimony and by deposition, where they existed. Based upon the evidence, I make the following findings of fact:

1. I have jurisdiction of the parties and the subject matter of these claims.
2. In the Final Compensation Order Denying PTD Benefits, the Employer prevailed in its defense of the claim for PTD benefits. This ruling was not appealed.
3. As such, the Employer is the prevailing party and entitled to the taxation of reasonable costs against the claimant pursuant to the provisions of section 440.34(3), Fla. Stat.
4. I find Three Thousand Three Hundred Six Dollars and twenty-seven cents (\$3,336.27) is the reasonable costs taxable against the claimant. I arrived at such amount by deducting the sum of \$1,380.00 from the total amount claimed of \$4,716.27.
5. In arriving at the above amount, I deducted \$1,200.00 for the expenses associated with the EC's obtaining Dr. Beckner as an IME expert. I do not find that there was a reasonable basis for the EC to obtain an IME expert thereby

necessitating incurring charges associated with the IME evaluation and deposition testimony. I make this finding because both of the treating physicians had assigned either no work restrictions or very minimal work restrictions when the legal standard at issue was whether the claimant could perform sedentary work within a 50 mile radius from her home. When the IME examination was conducted, the deposition of Dr. Maluso had been taken during which he assigned 30-35 pound weight restrictions. Dr. Goll had assigned no work restrictions. Dr. Beckner agreed with Dr. Goll and assigned no work restrictions.

6. Further, I deducted \$180.00 from the extra charges from the process server associated with rush service of subpoenas. I find that the EC had sufficient notice of the identities of the witnesses prior the merits hearing so as to arrange to issue and serve such subpoena's for trial without incur last minute "rush" charges.

DONE AND ORDERED this 27th day of July, 2010, in Orlando, Orange County, Florida.




Neal P. Pitts

Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Jacksonville District Office
1809 Art Museum Drive, Suite 200
Jacksonville, Florida 32207
(904) 348-2790
www.jcc.state.fl.us



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing order was entered and a true copy was furnished by electronic transmission on this 27th day of July, 2010 to counsel of record or the parties by regular U.S. mail, if unrepresented:


Secretary to Judge Neal P. Pitts
Judge of Compensation Claims

Thomas A. Vaughan
Vaughan Law Group, P.A.
121 South Orange Avenue Suite 900
Orlando, Florida 32801
jennie@vaughanpa.com;tvaughan@vaughanpa.com

Rex A. Hurley
Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A.
1560 Orange Avenue, Suite 500
Winter Park, Florida 32789
rhurley@hrmcw.com