

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
Orlando District**

EMPLOYEE:

Kerwin King
1151 Sugar Belt Drive
St. Cloud, FL 34772

EMPLOYER:

Osceola County Sheriff's Office
2601 East Irlo Bronson Memorial
Highway
Kissimmee, FL 34744

CARRIER/SERVICING AGENT:

Florida Sheriff's Workers' Compensation
Self-Insurance Fund, serviced by
North American Risk Services
P.O. Box 166002
Altamonte Springs, FL 32716

ATTORNEY FOR EMPLOYEE:

Michael Clelland, Esquire
Bichler, Clelland, Oliver, Kelley, Longo,
Hastings, Spears & Parrish, PLLC
541 South Orlando Avenue, Suite 310
Maitland, FL 32751

ATTORNEY FOR

EMPLOYER/CARRIER/SA:

Rex A. Hurley, Esquire
Hurley, Rogner, Miller, Cox,
Waranch & Westcott, P.A.
1560 Orange Avenue, Suite 500
Winter Park, FL 32789

OJCC CASE NO.: 10-015198TWS

D/A: 5/16/2006

Judge: Thomas W. Sculco

EVIDENTIARY

ORDER ON MOTION TO TAX COSTS

After proper notice to all parties, a hearing was held on this claim in Orlando, Orange County, Florida on March 21, 2011. Present before the Court was the claimant's counsel, Michael Clelland, Esquire and counsel for the Employer/Carrier/Servicing Agent, Kimberly De Arcangelis, Esquire.

This Order addresses the Employer/Carrier/Servicing Agent's Motion to Tax Costs filed with DOAH on February 8, 2011.

Documentary Evidence:

1. Composite consisting of the Employer/Carrier/Servicing Agent's Motion to Tax Costs OJCC Case No. 10-015198TWS
Florida Bar No.: 0435510
Order on Motion to Tax Costs

and attachments.

2. Claimant's Verified Response to the Employer/Carrier/Service Agent's Motion to Tax Costs and supporting case law exhibit.

Stipulations:

At the onset of the evidentiary hearing on the Employer/Carrier/Service Agent's Motion to Tax Costs the parties stipulated to the amount sought to be recovered by the Employer/Carrier/Service Agent, totaling \$1,240.74, and that the items listed on the Affidavit of Costs were appropriate taxable costs under the Statewide Uniform Guidelines for Taxation of Costs and Civil Actions.

After hearing all of the testimony, evidence and arguments and after having resolved any conflicts therein, the undersigned Judge of Compensation Claims makes the following findings of fact and conclusions of law: Since the parties stipulated to the amount sought to be reimbursed by the Employer/Carrier/Service Agent, the issue for determination is whether the Employer/Carrier/Service Agent is entitled to recover costs as the prevailing party in light of the claimant's voluntary dismissal of the Petition for Benefits filed on June 30, 2010. The undersigned Judge of Compensation Claims finds that, as the prevailing party, the Employer/Carrier/Service Agent is entitled to reimbursement of \$1,240.74.

The undersigned Judge of Compensation Claims finds that it lacks jurisdiction to hear the claimant's constitutional arguments.

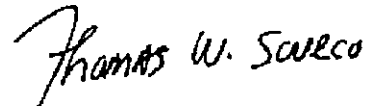
The undersigned Judge of Compensation Claims rejects the claimant's argument that Florida Statute §440.30 only provides for the taxation of depositions to a prevailing claimant, and not for a

prevailing Employer/Carrier/Servicing Agent. The undersigned Judge of Compensation Claims has previously ruled on the argument in the matter of Margaret McCollum v. Alternative Services Concepts and Orange County Board of County Commissioners, OJCC Case No. 09-000934TWS (Order entered on July 19, 2010) and finds that Florida Statute §440.34(3) provides for the taxation of reasonable costs to any prevailing party, which is the Employer/Carrier/Servicing Agent in this case.

Finally, the undersigned Judge of Compensation Claims rejects the claimant's argument that Florida Statute §440.19(6) is applicable.

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that the claimant, Kerwin King, shall pay the Employer/Carrier/Servicing Agent costs in amount of One Thousand Two Hundred Forty Dollars and Seventy Four Cents (\$1,240.74) within ten (10) days of the Order herein.

DONE and ORDERED in Orlando, Florida, this 28th day of March, 2011.



Thomas W. Sculco
Judge of Compensation Claims
Orlando District

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the above Order was entered by the Judge of Compensation Claims and that a copy was served to the parties via electronic mail through their respective attorney of record or by U.S. Mail if unrepresented.



Digitally signed by Marla
Miller
Date: 2011.03.28 14:29:35
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Assistant to Judge Sculco

OJCC Case No. 10-015198TWS
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