

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

Sean Hall,
Employee/Claimant,

OJCC Case No. 14-027217ERA

vs.

Accident date: 10/9/2013

Florida Highway Patrol/Division of Risk
Management,
Employer/Carrier/Service Agent.

Judge: Edward Almeyda

EVIDENTIARY ORDER GRANTING EMPLOYER/CARRIER'S MOTION TO TAX COSTS

This matter came before me, the undersigned Judge of Compensation Claims, for an evidentiary hearing held on December 14, 2015 on the Employer/Carrier's (hereinafter E/C) motion to tax costs. The motion is dated 11/17/2015. The Claimant was represented by Deirdre DiBiaggio, Esquire, and the E/C by Kate Albin, Esquire.

DOCUMENTARY EVIDENCE:

Carrier:

1. Verified Motion with attachments (74)

Claimant:

1. Response to Verified Motion (76)

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Claimant has not conceded that the procedural status of this case renders the E/C as the prevailing party. The attachments to the E/C's verified motion include a notice of voluntary dismissal dated 8/10/2015 of the petition dated 11/24/2014. By virtue of this voluntary dismissal, the E/C is deemed to be a prevailing party and entitled to costs. See *Palm Beach County School Board v. Fernandez*, 975 So2d 1224 (Fla. 1st DCA, 2008).

In the alternative, the Claimant contested the sought costs on various grounds. These sought costs are analyzed together with the Claimant's objections thereto.

1. Claimant's deposition dated 1/20/15. The Claimant is objecting to the \$90.00 charge for the use of the conference room in North Miami. This was done to accommodate the travel for the E/C's attorney. This charge is not appropriate as the E/C's attorney has an office in Miami. In all other respects, the objections are overruled, as the Claimant did not present any evidence to support the suggestion that the appearance fee is included in the cost of the transcript. **\$412.95 is taxable.**
2. The Claimant is objecting to the cost of the records obtained in 3/4/15 as they were not used and not relevant to the defenses. This objection is overruled in light of the nature of the claim, where a full medical picture of the Claimant is relevant. Likewise, the process server fee for Dr. Valledor is not found to be unreasonable, as no evidence was presented to support this contention. **\$345.86 is taxable.**
3. Appearance fee Dr. Gomes deposition, 3/24/15. No objection. **\$200.00 is taxable.**
4. Court reporter fee Dr. Gomes, 3/24/15. The objection is that the appearance fee is included in the transcript cost. No evidence was presented to substantiate that objection. **\$382.80 is taxable.**
5. Court reporter fee Livia Finale 3/24/15. The objection is that the appearance fee is included in the transcript cost. No evidence was presented to substantiate that objection. **\$184.50 is taxable.**
6. Dr. Kamireddy IME. The Claimant is objecting to records review of \$800.00 and \$200.00 for pre-deposition conference. The E/C said that in excess of 500 pages were

sent for records review. In view of that fact, the records review is not unreasonable as no evidence was presented as to what otherwise would have been reasonable. The pre-deposition conference is properly taxable. **\$2400.00 is taxable.**

7. The court reporter fee for Dr. Kamireddy is also challenged to the extent of the appearance fee, for the same reasons as the other similar charges. This is overruled, and **\$439.55 is taxable.**
8. The witness fee of \$250.00 paid to Dr. Cortes is challenged by the Claimant. Only **\$200.00 is taxable.**
9. No objection to the \$158.30 for Dr. Cortes court reporter charge. **\$158.30 taxable.**
10. The court reporter charge for Maria Hall which included the use of the conference hall is reduced by the conference halls charge. **\$105.00 is taxable.**
11. The objection to the condensed transcript charge and the digital transcription charge for the deposition of Dr. Pianko is well founded, and those charges are not allowed. **\$349.79 is taxable.**
12. The objection to the Health Port charge is overruled, and the medical history of the Claimant's family was an issue. **\$38.58 is taxable.**
13. The Claimant objected to the use of a conference room for the deposition of Carlton Hall on 7/21/2015. This is overruled, and the deposition took place outside the State of Florida. Likewise, the objections to the issuance of the subpoena and service of the same are overruled. **\$578.15 is taxable.**
14. The Claimant objected to the fee for the EMA appointed at the request of the E/C. F.S. 440.13(9)(f) does not give the right to an E/C to tax costs for an EMA, therefore,

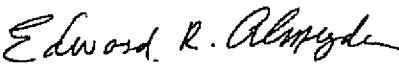
this charge is not taxable.

In view of the above findings, the sum of \$5,795.48 is awarded as taxable costs to the E/C payable by the Claimant.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. THE CLAIMANT, SEAN HALL, SHALL REIMBURSE THE EMPLOYER/CARRIER THE SUM OF \$5,795.48 AS TAXABLE COSTS.

DONE AND ORDERED this 15th day of December, 2015, in Miami, Dade County, Florida.

S 

Edward Almeyda
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Miami District Office
401 Northwest 2nd Avenue, Suite N-918
Miami, Florida 33128-3902
(305)377-5413
www.fljcc.org

COPIES FURNISHED:

Sean Hall
8817 SW 153 Terrace
Palmetto Bay, FL 33157

Florida Highway Patrol
2515 West Flagler Street
Miami, FL 33135

Division of Risk Management
PO Box 8020
Tallahassee, FL 32314
DRM.JCCDOCS@myfloridacfo.com

Deirdre J. DiBiaggio
Deirdre DiBiaggio, P.A.

27 Almeria Avenue
Coral Gables, FL 33134
djd@dibiaggiolaw.com, dayanara@dibiaggiolaw.com

Andrew R. Borah, Esquire
Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A.
1280 SW 36th Avenue, Suite 100
Pompano Beach, FL 33069
aborah@hrmcw.com, sfournier@hrmcw.com