

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF JUDGES OF COMPENSATION CLAIMS  
FORT LAUDERDALE DISTRICT OFFICE**

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Pro Se

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**CARRIER/SERVICING AGENT:**  
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**OJCC No:** 13-027398DAL  
**D/A:** 10/24/2013  
**JUDGE:** Daniel A. Lewis

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**FINAL EVIDENTIARY ORDER ON EMPLOYER/CARRIER'S  
VERIFIED MOTION TO TAX COSTS**

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THIS CAUSE came on to be heard before the undersigned Judge of Compensation Claims (JCC) on August 19, 2015 for an evidentiary hearing on the employer/carrier's Verified Motion to Tax Costs.<sup>1</sup> The employer/carrier's Verified Motion to Tax Costs was filed on February 6, 2015. No Response thereto was filed by the claimant.<sup>2</sup>

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<sup>1</sup> This matter was originally scheduled to be heard on May 12, 2015. At that hearing, the claimant requested additional time to attempt to obtain legal representation. Consequently, the evidentiary hearing was rescheduled for June 23, 2015. At the June 23, 2015 hearing, the claimant stated he never received the employer/carrier's Verified Motion to Tax Costs and attached Affidavit. At that hearing, the undersigned provided copies of those pleadings to the claimant, and the employer/carrier offered to reschedule the hearing on its Motion. Consequently, the evidentiary hearing was again rescheduled to August 19, 2015.

<sup>2</sup> The claimant is currently unrepresented by counsel and appeared at this hearing on his own behalf, *in pro se*. The claimant was previously represented by two different attorneys, both of whom withdrew prior to these proceedings.

At this evidentiary hearing, documentary exhibits, including the employer/carrier's Verified Motion to Tax Costs, the Affidavit in Support of Motion to Tax Costs signed by counsel for the employer/carrier, the claimant's petitions for benefits filed on November 22, 2013 and on June 11, 2014, the Notice of Voluntary Dismissal Without Prejudice filed by the claimant on January 5, 2015, the Order Closing File entered on January 9, 2015, and the invoices for the costs incurred, were admitted into evidence; and argument was presented.

After careful consideration and review of the evidence and argument presented, I make the following determinations:

1. The evidence reveals that on November 22, 2013 and on June 11, 2014, the claimant filed petitions for benefits seeking a determination of the compensability of the accident and injuries, authorization of medical care, and attorney's fees, costs, interest and penalties. A Final Hearing was scheduled on the claimant's petitions for January 8, 2015.

2. On January 5, 2015, the claimant filed a Notice of Voluntary Dismissal Without Prejudice of the claims contained in the November 22, 2013 petition for benefits. At the time of the January 8, 2015 Final Hearing, the claimant also voluntarily dismissed his June 11, 2014 petition for benefits. An Order Closing File was entered by the undersigned on January 9, 2015.

3. Although the employer/carrier filed its Verified Motion to Tax Costs on February 6, 2015, no Response thereto was filed by the claimant. Fla. Admin. Code Rule 60Q-6.124(3)(b) requires that a verified response be filed within 30 days after the motion is served. The Rule further provides that "Failure to file a timely and specific response to a motion for attorney's fees and costs...shall, absent good cause, result in acceptance of the allegations in the motion as true." *See also Morrison Management Specialists vs. Pierre*, 77 So. 3d 662 (Fla. 1<sup>st</sup> DCA 2011). Under the case law, pro se litigants, such as the claimant herein, are bound by the same rules that

apply to counsel. Cabrera vs. Outdoor Empire, Inc., 134 So. 3d 573 (Fla. 1<sup>st</sup> DCA 2014).

Moreover, where a claimant fails to file a detailed response to a motion to tax costs, the employer/carrier is not required to submit invoices or receipts proving it actually expended the amounts claimed in the motion. Instead, a detailed listing of all taxable costs incurred or advanced is sufficient. Hillsborough County Sheriff's Office vs. Hilsman, 23 So. 3d 743 (Fla. 1<sup>st</sup> DCA 2009).

4. The employer/carrier contends that, in defense of the claims presented, it undertook discovery and incurred litigation costs. The employer/carrier seeks reimbursement of its litigation costs incurred pursuant to section 440.34(3), Fla. Stat. That subsection provides, in pertinent part, that if any party should prevail in any proceedings before a JCC, there shall be taxed against the nonprevailing party the reasonable costs of such proceedings, not to include attorney's fees. The statute mandates that costs be taxed against the nonprevailing party, whether that party is the claimant or the employer/carrier. F.A. Richard and Associates vs. Fernandez, 975 So. 2d 1224 (Fla. 1<sup>st</sup> DCA 2008).

5. Case law instructs us that the employer/carrier becomes the prevailing party and entitled to its reasonable costs incurred when the claimant voluntarily withdraws his pending petitions; whether the dismissal is taken with or without prejudice to refile has no bearing on that result. Palm Beach County School District vs. Ferrer, 990 So. 2d 13 (Fla. 1<sup>st</sup> DCA 2008).

6. Fla. Admin. Code R. 60Q-6.124(3)(e) provides that the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions shall be considered by the JCC in determining the reasonableness of an award of cost reimbursement. The employer/carrier's costs incurred in the defense of this cause were listed in the Affidavit in Support of Motion to Tax Costs signed by counsel for the employer/carrier. Those costs were as follows:

<u>Cost</u>	<u>Date</u>	<u>Amount</u>
Deposition of the claimant	January 29, 2014	\$346.35
Copies of Unemployment Records	April 9, 2014	\$17.65
Copies of Medical Records - Health Port	August 1, 2014	\$19.82
Copies of Medical Records - Dr. Lagone	February 25, 2014	\$78.75
Service of Subpoena - Larry Hesenius	August 18, 2014	\$55.00
Deposition of R/C Dr. Lagone	September 6, 2014	\$146.95
Deposition of Employer Witnesses	October 28, 2014	\$457.90
	Total	\$1122.42

7. Notwithstanding the claimant's failure to file a Response to the employer/carrier's Verified Motion to Tax Costs which, as stated, results in the acceptance of the allegations in the Motion as true, counsel for the employer/carrier also testified that the foregoing discovery was relevant and necessary to the then pending claims and defenses. Those defenses included that the alleged accident did not occur, that the claimant was terminated for misconduct, and that the claimant committed fraud or misrepresentation. Specifically, the employer/carrier deposed the claimant; obtained copies of the claimant's unemployment records since there were pending claims for temporary disability benefits; obtained copies of the claimant's medical records; served a subpoena on the claimant's supervisor, Larry Hesenius (the named employer is a professional employer organization, or PEO); deposed the records custodian of Dr. Lagone with respect to the employer/carrier's fraud defense, since the claimant's then attorney did not agree to admit the records without a deposition; and deposed four employer witnesses with respect to the occurrence of the alleged accident and the reason for the claimant's termination from

employment. According to the employer/carrier, these witnesses were listed on the parties' Pretrial Stipulation.

8. Pursuant to the Statewide Uniform Guidelines for Taxation of Costs, I find the foregoing costs are taxable against the claimant as the nonprevailing party. I find the costs in the total amount of \$1122.42 constitute reasonable litigation costs. In accordance with the Uniform Guidelines for Taxation of Costs, I further find these costs were reasonably necessary to defend the case at the time the action precipitating the cost was taken. Nealy vs. Florida Department of Revenue, 40 Fla. L. Weekly D1822 (Fla. 1<sup>st</sup> DCA August 4, 2015).

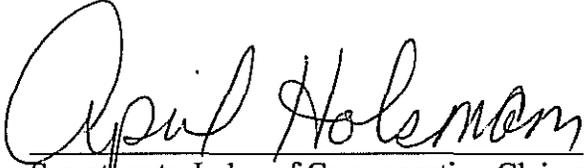
9. The employer/carrier's Verified Motion to Tax Costs is hereby granted. The employer/carrier's costs in the amount of \$1122.42 shall be, and the same are hereby, taxed and awarded against the claimant.

DONE AND ORDERED at Lauderdale Lakes, Broward County, Florida this  
19<sup>th</sup> day of August, 2015.

  
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Honorable Daniel A. Lewis  
Judge of Compensation Claims

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true copy of the foregoing Final Evidentiary Order on Employer/Carrier's Verified Motion to Tax Costs was furnished this 19<sup>th</sup> day of August, 2015 by electronic transmission to the parties' counsel of record and by U.S. mail to the parties.

  
Secretary to Judge of Compensation Claims