

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

Oheneba Appiah
Employee/Claimant,

OJCC Case No. 12-016285NSW

vs.

Accident date: 11/7/2011

Hungry Howie's Pizza #267
and
Chartis Insurance
Employer/Carrier/Servicing Agent.

Judge: Nolan S. Winn

FINAL EVIDENTIARY ORDER TAXING COSTS

THIS CAUSE came on to be heard in Pensacola, Florida on 11-17-14 upon the Employer/Carrier's (E/C's) Verified Motion to Tax Costs. The Motion was filed 08-28-13. The Final Hearing occurred four hundred forty-five (445) days thereafter and this Order was entered zero (0) days following such hearing. Matthew Bennett, Esq. appeared via telephone on behalf of the E/C. Donovan Whibbs, Esq. was present on behalf of Claimant.

Submitted into evidence at the Final Hearing were the following documents, each accepted, identified and placed into evidence without objection except where noted, as Judge's Exhibits, Joint Exhibits, Claimant's Exhibits, or E/C Exhibits, as follows:

JUDGE'S EXHIBITS MARKED FOR THE RECORD:

- #1. Pre-trial Stipulation filed 10-16-14.
- #2. E/C's Verified Motion to Tax Costs and attached affidavit and documents filed 08-28-13.
- #3. Claimant's response Disputing Motion to Tax Costs filed 09-23-13.
- #4. Petition for Benefits filed 07-16-12.
- #5. E/C Response to Petition for Benefits filed 08-14-12.
- #6. Mediation Conference Report dated 12-03-12.
- #7. Notice of Voluntary Dismissal without Prejudice filed 02-05-13.
- #8. Petition for Benefits filed 07-12-13.
- #9. E/C Response to Petition for Benefits filed 08-19-13.
- #10. Notice of Voluntary Dismissal without Prejudice filed 09-04-14.

JOINT EXHIBITS:

None.

E/C's EXHIBITS:

None.

CLAIMANT'S EXHIBITS:

None.

In making the determinations set forth below, I have attempted to distill the salient facts together with the findings and conclusions necessary to resolve this claim. I have not attempted to painstakingly summarize the substance of the parties' arguments, nor the support given to my conclusions by the various documents submitted and accepted into evidence; nor have I attempted to state nonessential facts. Because I have not done so does not mean that I have failed to consider all of the evidence. In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all evidence submitted to me. I have considered arguments of counsel for the respective parties, and analyzed statutory and decisional law of Florida.

Based upon the parties' stipulations and the evidence and testimony presented, I find:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.
2. Any and all issues raised by way of the Verified Motion, but which issues were not dismissed or tried at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the E/C and, therefore, are Denied and Dismissed with prejudice. See, Scotty's Hardware v. Northcutt, 883 So.2d 859 (Fla. 1st DCA 2004).
3. The Claimant filed a Petition for Benefits on 07-16-12 seeking compensability and authorization of medical care. Twenty-nine (29) days later on 08-14-12, the E/C filed its response acknowledging compensability but denying the claimed medical benefits. Thereafter on 02-05-13, the Claimant dismissed his Petition. The E/C contends as it timely responded to the Petition admitting compensability and thereafter when the Claimant dismissed his petition without securing the medical benefits sought, the E/C was the prevailing party entitled to tax costs.

4. As to the issue of medical benefits, the Claimant did not receive the medical benefits he sought from the E/C, yet dismissed his petition. Such dismissal rendered the E/C the prevailing party as to that issue.

5. As to the issue of compensability, I find the Claimant was the prevailing party. While the E/C's 08-14-12 response to the 07-16-12 petition may have been timely with regards to liability for attorney fees pursuant to Ch. 440.34(3), F.S., such response was untimely with regards to the issue of compensability.

6. Pursuant to Ch. 440.192(8), F.S., E/C had 14 days from receipt of the Petition to respond accepting compensability, denying compensability or initiating payment reserving the right to investigate compensability. An E/C that fails to respond within 14 days is deemed to have accepted compensability. The E/C did not respond within 14 days and as a result, the Claimant prevailed as a matter of law on his claim seeking compensability. The E/C's belated acknowledgment on 08-14-12 accepting compensability, while such may insulate the E/C from payment of attorney fees, does not alter the fact that Claimant prevailed on the issue of compensability.

7. The costs which the E/C seeks are for three depositions and for obtaining various medical records. I find the E/C entitled to cost associated with securing all of the medical records. I further find the E/C entitled to costs associated with the deposition of Dr. Concepcion as such deposition was taken by the Claimant long after the issue of compensability had been resolved and thus such, if related to any matter still at issue, was related to the claim for medical benefits. As for the costs of the deposition of Mr. Gainer, the Claimant's supervisor, as such was taken, according to the E/C's motion, to disprove the Claimant's testimony he was advised by Mr. Gainer not to report the accident, such dealt only with compensability, not entitlement to medical benefits. As a result, Mr. Gainer's deposition costs are not taxable by the E/C as it did not prevail on such issue. With regards to the Claimant's deposition, as testimony therein resulted in questions regarding compensability: i.e., thus Mr. Gainer's deposition thereafter; as well as medical claims, I find such deposition to be 50% related to compensability and 50% related to medical issues. The E/C is therefore entitled to recover 50% of the costs of Claimant's deposition.

It is therefore,

ORDERED AND ADJUDGED that:

1. The E/C's Verified Motion to Tax Costs is **GRANTED IN PART AND DENIED IN PART**. The E/C is entitled to recover from Claimant taxable costs in the sum of \$424.22.

DONE AND SERVED this 17th day of November, 2014, in Pensacola, Escambia County, Florida.



Nolan S. Winn
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