

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
PORT ST. LUCIE DISTRICT OFFICE

Robert Amritt,)	
Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 11-009443RDM
Northwest Medical Center/Broadspire,)	
Employer/ Carrier/ Servicing Agent.)	Accident date: 9/11/2010
_____)	

FINAL EVIDENTIARY ORDER

AN EVIDENTIARY HEARING was conducted on the employer/carrier's (E/C) motion to enforce settlement filed February 9, 2012.

HAVING CONSIDERED the evidence presented, together with argument of counsel, I make the following determinations:

1. The Judge of Compensation Claims (JCC) has jurisdiction over the parties and subject matter.
2. The parties were properly notified of the hearing.
3. Claimant was a medical technician who injured his right knee while working in Broward County, Florida. He moved to Saint Lucie County and obtained the services of Reich & Mancini, P.A. (Reich).

Several petitions were filed seeking various medical benefits which E/C provided.

This case did not go to trial and was not considered at a state mediation conference. A private mediation conference scheduled for February 7, 2012, was canceled because, according to E/C, a settlement was reached between the parties through their respective counsel. It is undisputed that Mr. Reich and E/C's attorney, Mr. Luger, did in fact reach an agreement that all

pending claims would be resolved pursuant to section 440.20(11)(c) for a gross payment of \$15,100.00 plus an additional attorney's fee of \$1,500.00, total \$16,600.00.

The factual question for my determination is whether in doing so Mr. Reich acted within the explicit authority given him by his client, the claimant.

The evidence relating to this is considered in terms of E/C having the burden to show Reich had its client's "clear and unequivocal authority to settle on the client's behalf." *Fivecoat v. Publix Supermarkets, Inc.*, 928 So. 2d 402, 403 (Fla. 1st DCA 2006).

In reaching a decision, claimant's assertion of privilege as to communications between him and Reich are overruled. *See, Hamilton v. Hamilton Steal Corp.*, 409 So. 2d 1111, 14 (Fla. 4th DCA 1982) ("No court should countenance and announced settlement between counsel followed by escape therefrom, if one side arbitrarily reneges and then seals his counsel's lips by invoking the attorney-client privilege.").

I accept the testimony of Andrew Reich, and reject that of claimant, to the effect that claimant gave his attorney authority to settle the case for an amount wherein he would net \$12,500.00.

My conclusion is underscored by the somewhat odd figure of the gross settlement amount being \$15,100.00. When a statutory fee is backed out of this amount together with costs of \$340.00, claimant nets \$12,500.00.

Moreover, E/C's payment of an additional attorney's fee of \$1,500.00 pursuant to section 440.34(7) appears warranted by Reich having secured various medical benefits during the span in which they represented claimant and filed various petitions obtaining additional medical care.

4. Although this may be a matter of semantics, a JCC does not have jurisdiction or authority to "enforce" a settlement agreement. *Metropolitan Dade County v. Rolle*, 661 So. 2d

124, 127 (Fla. 1st DCA 1995).

In so finding, I recognize language in cases such as *Jacobsen v. Ross Stores*, 882 So. 2d 431 (Fla. 1st DCA 2004) suggests a JCC has “enforcement” power. This is language of convenience and does not overrule prior cases which, of course, our appellate courts are reluctant to do, especially without saying so.

The heart of the opinion in *Jacobsen* is contained in the following language:

"A JCC's jurisdiction relating to settlement agreements is well-settled. Construction of a settlement agreement is a matter clearly within the providence of the JCC. The JCC has authority to determine whether a valid, binding settlement agreement was reached, and if so to give effect to the settlement agreement." *Id.* at 433 (internal quotations and citations omitted).

5. In order to give effect to the settlement agreement it remains incumbent on the parties to comply with the provisions of Section 440.20(11) (c), to wit, submit the stipulation to a JCC with sufficient documentation to indicate support considerations have been properly taken into account and the attorney's fee otherwise is in accordance with the law, together with other administrative details such as preparing an Attorney Fee Data Sheet.

Upon presentation of these documents, if otherwise appropriate, with or without claimant's signature, an order will be entered approving this settlement. This will act as a resolution of all of claimant's workers' compensation benefits, past and future, pursuant to Section 440.20(11)(c).

6. The remaining consideration is execution of any settlement documents. E/C's motion reads, “The employer/carrier seeks an order compelling the claimant to execute settlement documents.” However, the motion itself, as well as the evidence presented at the hearing, makes no mention of any other documents agreed to by counsel for the parties. Forcing claimant to execute the settlement papers themselves is not within the authority of a JCC. It is

incumbent upon E/C to apply to a civil court for such enforcement by way of a rule nisi wherein the civil court *inter alia*, may utilize its contempt power to compel document completion pursuant to section 440.24(1).

WHEREFORE, it is

ORDERED AND ADJUDGED as follows:

a. Claimant and employer/carrier reached a valid, binding settlement agreement of claimant's workers' compensation case as otherwise explained in the text of this order.

b. Upon submission of appropriate settlement documents providing that claimant receives no less than a net of \$12,500.00 and is otherwise in accordance with the provisions of section 440.20(11)(c), and the administrative rules pertaining thereto, an order approving settlement will be entered.

DONE AND ORDERED this 15th day of June, 2012, in Port St. Lucie, St. Lucie County, Florida.



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I HEREBY certify that a true and correct copy of the foregoing has been emailed to the attorneys listed on this 15th day of June, 2012.



Assistant to the Judge of
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