

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
MIAMI-DADE COUNTY DISTRICT**

**EMPLOYEE:**

Orlando Menchaca  
2125 West 52 St., Apt. 208  
Hialeah, FL 33016

**ATTORNEY FOR EMPLOYEE:**

Richard E. Zaldivar, Esquire  
Richard E. Zaldivar, PA.  
2600 S.W. 3rd Avenue, Ste. 300  
Miami, FL 33129

**EMPLOYER:**

Creative Insurance Concepts, Inc.  
5175 Sunset Blvd., Suite 0  
Lexington, SC 29072

**ATTORNEY FOR  
EMPLOYER/CARRIER:**

Robert S. Gluckman, Esquire  
Hurley, Rogner, Miller, Cox, Waranch &  
Westcott, PA.  
1280 SW 36th Avenue, Suite 100  
Pompano Beach, FL 33069

**CARRIER:**

SUA Claims  
P.O. Box 948154  
Maitland, FL 32794-8154

**OJCC NO.:** 07-027939SMS

**D/A:** 3/3/2006

**FINAL EVIDENTIARY HEARING ORDER GRANTING E/C'S MOTION FOR  
SANCTIONS AGAINST RICHARD ZALDIVAR, ESQUIRE**

**THIS CAUSE** came before the undersigned Judge of Compensation Claims for a final evidentiary hearing on 2/26/10 regarding E/C's Motion for Sanctions filed on 1/14/10.

**Documentary Exhibits:**

E/C-

1. 12/24/09 Motion for Sanctions (filed 1/14/10) with attachments consisting of:  
9/22/09 Final Compensation Order; 10/22/09 Response to Petition for Benefits (PFB); 10/15/09 letter from Ms. Sabbattini to Mr. Zaldivar (including the handwritten note); 12/24/09 letter from Mr. Gluckman to Mr. Zaldivar; and 10/16/09 PFB.

Claimant-

1. 1/25/10 Response to E/C's Motion for Sanctions.
2. 1/22/10 Mediation Settlement Report.
3. 1/27/10 Dismissal Order.
4. 12/1/08 letter from Mr. Gluckman to Mr. Zaldivar.

**Finding of Fact and Conclusions of Law:**

1. On 9/22/09, a Final Compensation Order was entered after holding a final hearing on 8/31/09. The undersigned found that the E/C timely responded to the 11/17/08 PFB (alternate PCP/one-time change) by authorizing Occupational Health Clinic (a walk-in clinic). Moreover, I found that the claimant may still avail himself of the one-time change physician. However, the Claimant never presented to Occupational Health for treatment.

2. On 10/9/09, a PFB was filed for medical care with Occupational Health Clinic (OHC).

3. On 10/15/09, the adjuster, Ms. Sabattini advised Mr. Zaldivar that OHC had always been authorized and continues to be authorized. Ms. Sabattini further informed Mr. Zaldivar that had advised OHC of authorization to see the claimant.

4. According to Ms. Cooper (Associate of Mr. Zaldivar), Mr. Zaldivar requested on 10/20/09 that E/C schedule and appointment for the claimant.

5. On 10/22/09, E/C files their Response to the 10/9/09 PFB indicating that OHC does not accept appointments as it is a walk in facility. Authorization has been given to OHC to see the claimant and claimant has not availed himself of same.

6. On 12/24/09, E/C forwarded their Motion for Sanctions to Mr. Zaldivar. Mr. Gluckman informed Mr. Zaldivar to have the claimant appear at OHC.

7. E/C waited the required 21 days and Mr. Zaldivar nor the claimant dismiss the 10/9/09 PFB. Accordingly, E/C filed their Motion for Sanctions on 1/14/10.

8. There was no testimony from the claimant or Mr. Zaldivar at the 2/26/10 evidentiary hearing. Rather, the parties presented their evidence as delineated herein and argued their respective positions.

9. After carefully considering the evidence, I find that Mr. Zaldivar maintained the 10/9/09 PFB frivolously. Ms. Cooper on behalf of Mr. Zaldivar argued that the 12/1/08 letter and the 1/22/10 Mediation Report should be interpreted to mean that E/C was required to schedule an appointment so that claimant could be seen at OHC. I reject Mr. Zaldivar's argument.

10. The medical care requested is care with the initial PCP, oftentimes consisting of a clinic. Claimant was advised that the OHC was a walk-in clinic. As such, claimant could seek medical care at his convenience, advising E/C of the appointment date prior to or the date of the visit. I find that E/C authorized OHC from November of 2008 and continued to authorize same. OHC was placed on notice of said authorization as mentioned in the 10/15/09 letter.

11. Claimant offers the 1/22/10 mediation settlement report as proof that an appointment was required before claimant could be provided medical care. However, I cannot interpret the mediation settlement report in said fashion. The mediation settlement report simply indicates that the claimant has an appointment with OHC for 1/22/20 at 2:00 pm. There is no mention in the mediation settlement report that said appointment was required by OHC prior to seeing the claimant. Again, while the claimant requested an appointment, there is no evidence that OHC refused or would refuse to see the claimant when authorization has been provided but no appointment scheduled.

12. Moreover, Mr. Zaldivar failed to present any evidence that claimant made an effort to attend OHC and was rejected for lack of authorization. There is not evidence that either the claimant or Mr. Zaldivar made good faith efforts to contact E/C and request care with OHC prior to filing the 10/9/09 PFB. I find that Mr. Zaldivar maintained the 10/9/09 PFB frivolously. Accordingly, I find per F.S. 440.32 that E/C is entitled to attorney's fees paid by Mr. Zaldivar. E/C seeks \$15,000.00. However, the amount of the fee will be adjudicated at a future attorney's fee amount hearing, in the event the parties are unable to amicably resolve it. The parties are directed to file their verified petition for fees (E/C) and response (Mr. Zaldivar) according to 60Q-6.124 of the Rules Adjudicating Workers' Compensation Proceedings.

**WHEREFORE, IT IS ORDERED:**

1. E/C's 1/14/10 Motion for Sanctions against Richard Zaldivar, Esquire per F.S. 440.32 is granted.
2. E/C may file its verified petition for fees and Mr. Zaldivar may respond to same per 60Q-6.124.

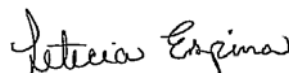


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Sylvia Medina-Shore  
Judge of Compensation Claims

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the instant Final Evidentiary Hearing Order Granting E/C's Motion for Sanctions has been furnished by U.S. Mail to the parties and via e-mail to the attorneys of record this 4<sup>th</sup> day of March, 2010.



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Secretary to JCC