

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

Terrell P. Snowden,)	
Employee/Claimant,)	Hon. Gerardo Castiello
)	
vs.)	
)	OJCC Case No. 11-013066GCC
YRC, Inc./Gallagher Bassett Services,)	
Employer/ Carrier/ Servicing Agent.)	Accident date: 12/8/2010
_____)	

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

I) PROCEDURAL HISTORY

After due notice, the above styled matter came before the undersigned Judge of Compensation Claims for evidentiary hearing on March 5, 2012. Claimant Terrell Snowden was represented by James Payer, Esquire of Payer Law Group. Employer YRC/Roadway Express, Inc., and Gallagher Bassett Services - Nashville (collectively hereinafter: E/C) were represented by Matthew Troy, Esquire of Hurley, Rogner, Miller, Cox, Waranch, and Westcott, P.A. This Order ensues.

II) EVIDENTIARY EXHIBITS

Except where otherwise indicated the following exhibits were admitted into evidence:

Exhibit #1- Employer/Carrier's Verified Motion to Tax Costs

Exhibit #2- Affidavit Regarding Costs

Exhibit #3- Affidavit in Support of Motion to Tax Costs

Exhibit #4- List Claim Payments

Exhibit #5- Uniform Pretrial Stipulation

Exhibit #6- Notice of Voluntary Withdrawal of Petitions for Benefits.

(III) CLAIMS AND DEFENSES:

(a) *Claims:*

(1) Employer/carrier is entitled to cost reimbursement in the amount of \$1,348.59 pursuant to Section 440.34(3), Florida Statutes.

(b) *Defenses:*

- (1) E/C costs are not reasonable and not taxable costs.
- (2) By statute, reimbursement to Dr. Katz may not exceed \$200.00 hour.
- (3) Travel costs are not reimbursable costs under the uniform guidelines.

(IV) FINDINGS OF FACT:

Having reviewed the record evidence and considered the arguments represented by the parties, the following findings of fact and conclusions of law are entered.

(1) Claimant filed a Petition for Benefits on August 5, 2011 in relation to an accident suffered on December 8, 2010.

(2) The employer/carrier raised a Section 440.105(b) misrepresentation defense.

(3) The matter was scheduled for final hearing to be heard on January 3, 2012.

(4) The deposition of Dr. Katz was taken on October 10, 2011.

(5) Claimant filed a voluntary dismissal the following day, on October 11, 2011.

(6) With the claimant's filing of the voluntary dismissal, the employer/carrier became the prevailing party in this litigation. See, *Palm Beach County School District v. Ferrer*, 990 So. 2d 13 (Fla. 1st DCA 2008); *Costco Wholesale Corporation v. Ulett*, 995 So. 2d 1016 (Fla. 1st DCA 2008)

(7) Pursuant to Section 440.34(3), Fla. Stat. (2009), the employer/carrier seek to have the

claimant held responsible to reimburse them for \$1,348.59 in costs incurred. (Exhibit 3)

(8) The undersigned has carefully reviewed the Affidavit Regarding Costs submitted by the employer/carrier. (Exhibit 2) It details the costs claimed.

(9) Claimant asserts that the costs incurred for a deposition not utilized at final hearing are not recoverable. This is incorrect as a matter of law and is rejected. See, *Moore v. Hillsborough County School Board*, 987 So. 2d 1288, 1289 (Fla. 1st DCA 2008) The employer/carrier's need to take the deposition of the claimant - the deposition cost challenged via this objection - is an essential part of properly investigating a litigated claim.

(10) Claimant's second point of contention is that the \$800.00 charged for Dr. Katz's deposition is the product of remuneration at a rate which exceeds that allowed by statute. (See Exhibit 2; Exhibit 4 - each confirming \$800.00 paid for deposition.)

(11) Section 440.13(10), Fla. Stat. (2009) establishes \$200.00 as the maximum rate of remuneration for medical witnesses. The employer/carrier seek remuneration at a rate double that. The claimant argues - but did not present evidence to the effect - that the deposition only lasted twenty (20) minutes; and that remuneration to Dr. Katz for the deposition should thus not exceed \$100.00. Based on the record evidence, it is appropriate to remunerate the employer/carrier for one hour of Dr. Katz's services at \$200.00 an hour.

(12) Dr. Katz billed the employer/carrier \$400.00 an hour for travel time. Travel time is generally not recoverable. (See, Statewide Uniform Guidelines For Taxation of Costs in Civil Action, Section II, B.1 - reasonable travel expenses "not to include the expert's time.) Claimant's position is meritorious. Claimant cannot be held responsible for this cost.


(13) The remaining costs sought by the employer/carrier are reasonable and are the product of efforts tailored towards litigation of issues that needed to be pursued as part of their proper defense against the issues presented. (Exhibit 4)

(V) DECREE:

Accordingly, it is hereby Ordered that:

(1) claimant Terrell Snowden shall pay to the employer/carrier \$748.59 (seven-hundred forty-eight and 59/100 dollars) in full and complete satisfaction of all cost obligations incurred to date.

Done and Ordered in chambers in Miami, Dade County, Florida this 6th day of March, 2012.



Gerardo Castiello
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copies of the foregoing Order on Employer/Carrier's Verified Motion to Tax Costs have been mailed to each of the parties listed below via U.S. mail this 6th day of March, 2012.

Terrell P. Snowden
10134 NW 33rd Street
Pompano Beach, Florida 33065

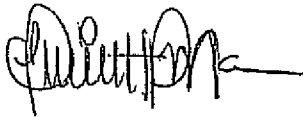
Gallagher Bassett Services
P.O. Box 292109
Nashville, Tennessee 37201

YRC, Inc.
11301 NW 134th Street
Miami, Florida 33178

I HEREBY CERTIFY that a true and correct copies of the foregoing Order on Employer/Carrier's Verified Motion to Tax Costs have been mailed to each of the parties listed below via E/mail this 6th day of March, 2012.

James D. Payer, Esquire
jdpayer@pimiami.com

Matthew Troy, Esquire
Hurley, Rogner, Miller, Cox, Waranch &
Westcott, P.A.
1560 Orange Avenue, Suite 500
Winter Park, Florida 32789



Assistant to the Judge of Compensation Claims

Final Hearing Statistics Worksheet

Please complete this form at the time of Order upload for any of the following:

Evidentiary Motion Hearing

Expedited Final Hearing

*****Fee Amount Hearing*****

Fee Entitlement Hearing

Final Hearing

Fund Hearing

Remand Hearing

Appellate Fee Hearing

OJCC Number(s) 11-013066GCC

Date Order Mailed/Emailed 03/06/2012

Trial/Hearing dates opened 03/05/2012; concluded 03/05/2012

For Final Hearing or Expedited Final Hearing:

Dates of all pending petitions heard _____

OR

For Evidentiary Motion Hearing:

Type of Motion _____

Filing Date of Motion Heard _____

OR

For Fee Amount Hearing or Fee Entitlement Hearing

Date motion or verified petition filed 11/02/2011

OR

For Appellate Fee or Remand Hearing

Date of Mandate _____

AND

If abbreviated final/fee order was issued and later vacated:

Date Abbreviated Order Entered: _____

Date Abbreviated Order Vacated: _____