

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

Mark Burgess,
Employee/Claimant,

vs.

OJCC Case No. 06-037509DSR, 07-003158DSR

Buckhead Beef Florida/Royalty Foods/Sentry
Casualty Company
Employer/ Carrier/ Servicing Agent.

Accident date: 8/2/2006

ORDER ON CLAIMANT'S VERIFIED MOTION TO TAX COSTS

This cause was heard before the undersigned at Sebastian, Indian River County, Florida on October 28, 2013, via Video Teleconference from Lakeland, FL. The Claimant's attorney was seeking a fee and costs from the Employer/Carrier. The Employer/Carrier agreed that they owed the fee and costs, but disputed the amounts. Bradley G. Smith, Esq., was present on behalf of the Claimant. Timothy Stanton, Esq., was present on behalf of the Employer/Carrier.

The following documentary items were received into evidence:

1. Any documentary items required by Rule 9.180 (Judge's Exhibit #1).
2. Verified Petition for Attorney's Fees filed April 4, 2013 (Claimant's Exhibit #1).
3. Final Compensation Order filed on December 1, 2009 (Claimant's Exhibit #2).
4. Final Compensation Order filed on December 27, 2012 (Claimant's Exhibit #3).
5. Retainer Agreement dated August 31, 2006 (Claimant's Exhibit #4).
6. Petition for Benefits filed on February 7, 2007 and Response dated March 20, 2007 (filed on March 26, 2007) (Claimant's Exhibit #5).
7. Petition for Benefits filed on April 3, 2007 (filed on April 5, 2007), and Response dated April 30, 2007 (filed on May 3, 2007) (Claimant's Exhibit #6).

8. Petition for Benefits filed on August 22, 2007 (filed on August 27, 2007), and Response dated September 11, 2007 (filed on September 14, 2007) (Claimant's Exhibit #7).
9. Formal Grievance (Claimant's Exhibit #8).
10. Petition for Benefits filed on September 19, 2007 (filed on September 21, 2007), and Response dated October 9, 2007 (Claimant's Exhibit #9).
11. Opinion from the First District Court of Appeals dated May 11, 2009 (Claimant's Exhibit #10).
12. Petition for Benefits filed on June 1, 2009 (Claimant's Exhibit #11).
13. Letter from Employer/Carrier to Claimant attorney dated December 23, 2009 (Claimant's Exhibit #12).
14. Petition for Benefits filed on April 30, 2012, and Response dated June 5, 2012 (Claimant's Exhibit #13).
15. Petition for Benefits filed on June 13, 2012, and Response dated June 27, 2012 (Claimant's Exhibit #14).
16. Payout Logs (Claimant's Exhibit #15).
17. Statement of Benefits (Claimant's Exhibit #16).
18. Paralegal Time Sheets (Claimant's Exhibit #17).
19. Fee Affidavit of Jeffrey Appel, Esq., filed on October 23, 2013 (Claimant's Exhibit #18).
20. Deposition of Jeffrey Appel, Esq., (Claimant's Exhibit #19).
21. Verified Motion to Tax Costs filed on April 4, 2013 together with 57 Exhibits (Claimant's Exhibit #20).

22. Verified Response to Petition for Attorney's Fees filed on May 1, 2013 (Employer/Carrier's Exhibit #1).
23. Employer/Carrier's Response to Specific Time Frames (Employer/Carrier's Exhibit #2).
24. Employer/Carrier's Response to Paralegal Time (Employer/Carrier's Exhibit #3).
25. Employer/Carrier's Specific Objections to Costs (Employer/Carrier's Exhibit #4).
26. Deposition of Bradley Smith taken on October 24, 2013 and filed October 25, 2013 (Employer/Carrier's Exhibit #5).
27. Composite Attorney Fee Orders filed on October 24, 2013 (Employer/Carrier's Exhibit #6).

At the hearing, Bradley G. Smith, Esq., Timothy F. Stanton, Esq., and Kevin S. Murphy, Esq., appeared and testified before me. In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the witnesses' testimony and may not refer to each piece of documentary evidence, I have attempted to resolve all of the conflicts in the testimony and evidence. Based on the foregoing and the applicable law, I make the following findings:

1. The Claimant filed a Verified Motion to Tax Costs on April 4, 2013.
2. The Motion was heard in conjunction with the Verified Motion for Attorney's fees on October 28, 2013.
3. The Motion requests \$20,864.34 in Costs. The Employer/Carrier filed a Verified Response indicating that taxable costs amounted to \$13,444.00.

4. At the hearing, the Claimant agreed to remove numerous costs: the costs associated with the Appeal (52-54,75), the costs for Facsimile charges (55), the costs for copies (pages 5-8), and the costs associated with travel to the Sebastian District Office (page 8).

5. The Employer/Carrier argued that all costs associated with David Heaston, a Vocational Expert, should be removed since Mr. Heaston had been hired to perform work on this claim for a different hearing, one in which the Claimant did not prevail. A review of the OJCC Docket and the Final Compensation Order awarding PTD benefits and attorney's fees and costs to the Claimant shows that the Employer/Carrier is correct. Mr. Heaston did not testify at the Final Hearing and his deposition was not received into evidence. As such, I agree that the costs associated with Mr. Heaston's evaluation #24, 31 and 48 are not reimbursable as taxable costs.

6. The Employer/Carrier asserts that items 1-9,18-19 are not related, but it is clear that these costs were incurred in obtaining the Claimant's medical records, etc., and as such, I find that they are reimbursable.

7. I find that the Express Mail charges for Dr. Simon, Dr. Goll, and JCC Court documents are taxable (#58), as well as the Federal Express Mail charges for deposition and Dr. Goll (#57).

8. I find that the AT&T Conference call required for closing arguments is a taxable cost as agreed to by the Employer/Carrier.

9. Based on the totality of the evidence before me I find that the Employer/Carrier shall reimburse taxable costs to the Claimant in the amount of \$14,001.12

WHEREFORE, it is **ORDERED AND ADJUDGED** that:

The Employer/Carrier shall reimburse taxable costs to the Claimant in the amount of \$14,001.12

DONE AND ELECTRONICALLY SERVED ON COUNSEL AND CARRIER this 4th day of
November, 2013, in Sebastian, Indian River County, Florida.



Donna S. Remsnyder
Judge of Compensation Claims
Sebastian/Melbourne District Office
1627 US-1, Suite 115
Sebastian, Florida 32958
(772)581-6800

Sentry Casualty Company
WCClaimsEast@sentry.com;

Bradley G. Smith, Esquire
bsmith@sfsmlaw.com,jccmail@sfsmlaw.com

Gregory D. White, Esquire
GWhite@hrmcw.com,DDykes@hrmcw.com

Timothy Stanton, Esquire
tstanton@hrmcw.com, awinston@hrmcw.com