

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

Marilyn Sparks,
Employee/Claimant,

OJCC Case No. 12-024337MES

vs.

Accident date: 9/23/2011

Howard Johnson/Guarantee Insurance
Company,
Employer/Carrier/Service Agent.

Judge: Margaret E. Sojourner

ORDER DETERMINING ENTITLEMENT TO ATTORNEY FEES

A hearing was held in this matter on October 23, 2017 on Claimant's claim to entitlement to attorney fees. Attorney Charles H. Leo was present on behalf of the claimant and attorney Gregory White was present on behalf of the EC. The following exhibits were marked and received into evidence:

Claimant:

1. Verified Petition for Attorney Fees and Costs filed at DN 124.
2. Motion for Advance filed at DN 119.
3. Uniform Pretrial Stipulation filed at DN 37.
4. Medical records of Dr. Bornstein filed at DN 63.
5. Memorandum filed at DN 148 and accepted as argument only.

EC:

1. Order on Motion for Clarification filed at DN 83.
2. Response to Motion for Advance filed at DN 120.

Joint:

1. Verified Response to Verified Motion for Attorney Fees and Costs filed at DN 128.
2. Deposition of Melissa Randall filed at DN 143.

Findings of Fact and Conclusions of Law:

1. I have jurisdiction over the parties and the subject matter of this claim.

2. Venue lies in Orange County, Florida.
3. The stipulations of the parties are accepted and adopted by me as findings of fact.
4. The claimant seeks an order finding entitlement to attorney's fees and costs arising out of petitions for benefits filed on November 20, 2013, January 10, 2014, May 8, 2014 and October 20, 2014. Claimant also seeks an attorney's fee and costs for obtaining an advance on behalf of the claimant.
5. The EC has stipulated that an attorney's fee is due the claimant for the obtaining PTD benefits sought in the November 20, 2013 PFB and medical mileage sought in the October 20, 2014 PFB. The EC argues there is no other entitlement for benefits obtained.
6. The claimant is not due an attorney's fee from the EC for obtaining an advance. *Sullivan v. Mayo*, 106 So.2d 4 (Fla. 1958). There was no evidence presented by claimant's counsel that the EC challenged the right to compensation when challenging the advance. A challenge to the method of payment of a benefit, as stated by the court in *Sullivan*, does not result in an attorney fee being due. In this matter the EC did not challenge the advance at all but simply requested an order be entered allowing the EC to recoup the monies advanced.
7. The claimant is not due a fee as a result of the petitions filed January 10, 2014 and May 8, 2014. The EC provided the benefit sought in the January 10, 2014 on January 27, 2014, less than 30 days after receipt of the PFB. *Section 440.34 (3), Florida Statutes* provides that attorneys shall not attach until 30 days after the date the carrier receives the petition. The May 8, 2014 PFB sought payment of Dr. Bornstein's bills. The EC filed a response on May 27, 2014 accepting responsibility for payment of the bills once the bills were submitted upon the appropriate forms. The adjuster testified that Dr. Bornstein had been sent an explanation as to why his bills had not been paid and indicated that once the bills were submitted properly they would be paid per the fee schedule. A carrier who accepts responsibility for the payment of bills within 30 days of a petition does not owe despite actual payment being made at a later date. *Sansone v. Crum*, 201 So.3d 1289 (Fla. 1st DCA 2016).

Wherefore it is ordered and adjudged as follows:

1. The claimant is entitled to an attorney's fee from the EC for the obtaining of PTD benefits and payment of medical mileage.
2. The claimant is not entitled to an attorney's fee from the EC with regard to the benefits claimed in the PFB's filed January 10, 2014 and May 8, 2014.
3. The claimant is not entitled to an attorney's fee from the EC for obtaining an advance.
4. Jurisdiction is reserved with regard to the amount of attorney's fee and costs due in the event the parties are unable to resolve the same.

DONE AND SERVED this 17th day of November, 2017, in Orlando, Orange County, Florida.

Margaret E. Sojourner

Margaret E. Sojourner
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Orlando District Office
400 West Robinson Street, Suite 608-North
Orlando, Florida 32801-1701
(407)245-0844
www.fljcc.org

COPIES FURNISHED:

Charles H. Leo
chickleo@bellsouth.net, ab_leo@bellsouth.net

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