

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

Richard Faria,  
Employee/Claimant,

OJCC Case No. 10-007153SLR

vs.

Accident date: 3/26/2003

Bayonet Point Health and Rehabilitation  
Center,  
Employer,

Judge: Stephen L. Rosen

Zurich American Insurance Company,  
Carrier/Service Agent.

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**FINAL ORDER FOR CONTESTED ATTORNEY'S FEES**

**After due notice** to the parties, a hearing was held in Pinellas County, Florida, on the issues of the amount of a reasonable attorney's fee for the attorney for the Claimant and the quantum of taxable costs to be reimbursed by the employer/carrier. The claimant, Richard Faria, was represented by William H. McKnight, Esq. The Employer, Bayonet Point Health and Rehab, and the carrier, Sedgwick CMS, were represented by W. Rogers Turner, Jr., Esq.

**The following documents were accepted into evidence:**

**Judge's Exhibits:**

1. Attorney's fee order filed November 30, 2010.
2. Attorney's fee order filed November 29, 2011.
3. Attorney's fee order filed October 10, 2013.
4. Letter order denying appearance of witness by telephone filed March 28, 2018.

**Claimant's Exhibits:**

1. Verified Petition for Attorney's Fees and Costs filed October 13, 2017, with attachments.
2. Witness and exhibit list filed February 26, 2018.
3. Employee's notice of filing inflation tables.

**Employer/Carrier Exhibits:**

1. Verified response to claimant's verified petition for attorney's fees and costs filed November 9, 2017.
2. Witness and exhibit list filed February 28, 2018.
3. Notice of filing and attached case law.

**I. On the issue of entitlement** of the Claimant to an attorney's fee at the expense of the Employer/Carrier, the employer/carrier does not contest the attorney for the claimant's entitlement to fees and costs at the expense of the employer/carrier. Additionally, the employer/carrier does not contest the requested costs in the amount of \$164.93.

**II. On the issue of the quantum** of a reasonable attorney's fee for the Counsel for the Claimant, I have carefully considered the evidence and the variables of F. S. 440.34(1) as follows:

**A. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly:**

Every case of permanent total disability is unique and requires the attention to the details of benefits, owed that claimant, by the attorney representing the claimant. However, the benefits secured involved the correct amount of benefits as opposed to benefits themselves being provided to the claimant.

The attorney for the claimant is well known to the undersigned and, although not board-certified, is a skilled workers' compensation practitioner with vast and varied experience within that legal specialty.

The attorney for the employer/carrier is also well known to the undersigned and is board certified in Workers' Compensation. He is also a skilled practitioner.

Both expert witnesses, on behalf of the parties, are equally well known to the undersigned and are also extremely skilled practitioners in workers' compensation.

**B. The fee customarily charged in the locality for similar Legal Services:**

The fee for Claimant's Counsel in compensation matters is normally determined under the guidelines of F. S. 440.34 and is contingent. When done on an hourly basis without the element of contingency or uncertainty of payment, the evidence reveals a range between \$175.00 and \$350.00 per hour as reasonable hourly rates for the claimant's attorney in the instant case. Because the attorney for the claimant in the instant case has withheld 10% of the claimant's permanent and total disability checks since he secured that benefit the claimant is not a significant factor.

**C. The amount involved in the controversy and the benefits resulting to the Claimant:**

The attorney for the claimant secured approximately \$1,018.00 in indemnity benefits for

the claimant. This is based on at least 3 of the multiple petitions for benefits that have been filed by the attorney for the claimant on behalf of his client. As noted above in this order, the employer/carrier agrees that the attorney for the claimant is entitled to fees at the expense of the employer/carrier for securing these benefits.

**D. The time limitation imposed by the Claimant or the circumstances:**

I find that there were not significant time limitations imposed on the attorney for the claimant. The matter proceeded in the normal course.

**E. The contingency or certainty of a fee:**

As in all workers' compensation matters, attorney's fees to the attorney for the claimant is contingent upon benefits being secured.

**A statutory fee** based on \$1,018,000 in benefits secured would yield an unreasonably low hourly rate if the fee was restricted to the statutory guidelines as they appear in F. S. 440.34. However, based on the evidence presented, I find that there was no significant litigation involved in securing the benefits on behalf of the claimant. There were 2 mediations and a supplemental deposition taken. There was no cessation of benefits to the claimant and there is no issue that medical care was denied the claimant. Rather, the attorney for the claimant was diligent in order to make sure that the claimant received his indemnity benefits timely and that the claimant received any supplemental benefits to which he was due on a timely basis.

However, I find that the necessary time spent to secure these benefits is less than those hours claimed by the attorney for the claimant. Reference was made to the time spent by the

attorney for the employer/carrier in the defense of the petitions, but those are not placed in evidence in any form.

I accept the verified opinion of the attorney for the employer/carrier that 19.25 hours would be reasonable for the attorney for the claimant to have spent in securing \$1,018.00 in benefits.

I find that based on the testimony presented by the expert witnesses, as well as the hourly rates presented by counsel of record in their verified petitions and responses upon which they have relied instead of testifying, \$300.00 per hour is a reasonable hourly rate for the attorney for the claimant in this particular case.

In awarding a fee that is more than the statutory guideline, I have placed special emphasis on the factors specified above. It is clear that an award of a guideline fee of \$203.70 would produce a fee that could only be considered as manifestly unjust.

Upon consideration of all the evidence and evaluation of the variables of F. S. 440.34(1) above, I find that a reasonable fee to Claimant's Attorney in this cause is in the amount of **\$5,775.00.**

### **III. On the issue of costs:**

The employer/carrier stipulates that **costs in the amount of \$164.93** are reasonable. That stipulation is accepted and the employer/carrier is directed to reimburse to counsel for the claimant costs in that amount.

**WHEREFORE**, the employer/carrier shall:

- 1) Pay to counsel for the claimant an attorney fee in the amount of **\$5,775.00**

2) Reimburse to counsel for the claimant costs in the amount of **\$164.93**.

DONE AND SERVED this 29th day of March, 2018, in St. Petersburg, Pinellas County, Florida.



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