

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
Orlando District**

**EMPLOYEE:**

Jerman R. Wheeler  
5225 Millenia Blvd., #302  
Orlando, FL 32839

**EMPLOYER:**

Coastal Delivery Inc.  
3730 Silver Star Road  
Orlando, FL 32808

**CARRIER:**

None

**ATTORNEY FOR EMPLOYEE:**

Lyle B. Masnikoff, Esquire  
Lyle B. Masnikoff &  
Associates, P.A.  
1645 Palm Beach Lakes Blvd.,  
Suite 550  
West Palm Beach, FL 33401

**ATTORNEY FOR EMPLOYER/CARRIER:**

W. Rogers Turner, Jr., Esquire  
Hurley, Rogner, Miller, Cox,  
Waranch and Westcott, P.A.  
1560 Orange Avenue, Suite 500  
Winter Park, FL 32789

**OJCC CASE NO.:** 14-020734TWS

**D/A:** 4/3/2014

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**FINAL EVIDENTIARY ORDER**

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**THIS CAUSE** came before the undersigned Judge of Compensation Claims on February 5, 2015 at Orlando, Orange County, Florida, for hearing on the Employer's Motion to Compel Answers to Deposition Questions and Motion for Sanctions filed with the JCC on January 9, 2015. Appearing was Attorney Ala Alikhani, Esquire for the claimant and W. Rogers Turner, Jr., Esquire for the Employer. The following exhibits were marked by the Judge of Compensation Claims:

**DOCUMENTARY EVIDENCE:**

1. Motion of the Employer regarding their Objection/Motion to Strike Order Compelling Employer's Response to Request to Produce (This matter was dealt with prior to the hearing on the instant issue and a separate Order is entered reflecting the disposition of that motion).
2. Claimant's Response to Employer's Motion to Compel Answers to Deposition Questions and Impose Sanctions
3. The deposition transcript of claimant's 10/27/14 deposition.

Having considered the evidence, pleadings and arguments, the undersigned makes the following findings of fact and conclusions of law:

1. I have jurisdiction over the parties and subject matter and venue is proper in Orlando, Orange County, Florida.
2. Claimant alleges an industrial accident occurring on or about 4/3/2014.
3. The Employer noticed the claimant's deposition and the claimant appeared for deposition on October 27, 2014. Attorney Ala Alikhani appeared by

telephone.

4. This was the first and to date the only deposition of the claimant taken by the employer. I have reviewed the deposition in its entirety. I would note that the claimant began testifying fairly courteously, but by the seventh page of the deposition, the claimant began questioning the employer's attorney's ability to ask certain questions. On page 9, the claimant was instructed by his counsel to answer an innocuous question.

5. On page 12 of the deposition, the following exchange occurred:

Q. How did you get here today?

A. I got driven here.

Q. Who drove you here today?

A. My friend.

Q. Who is that?

A. My personal friend.

Q. Who drove you to the deposition today, sir?

A. I do not want to give out my friend's information.

Thereafter, Mr. Turner asked Mr. Alikhani if questions should just be certified and would he like to speak to the claimant. Apparently a recess was taken and Mr. Alikhani presumably instructed the claimant regarding the rules of the deposition. However on page 13, after speaking to his attorney, the deponent

indicated that the driver was a "female" and he "had no reason to give you her name." Thereafter counsel for the employer correctly, in the interest of moving discovery along and not engaging in pointless exchanges with the claimant, indicated he would certify questions and make a list of them. The deposition notes that claimant's counsel again instructed the claimant to answer questions dealing with such background matters.

6. By page 14, the claimant is again being asked questions regarding a prior litigated matter. The following exchange occurs:

Q. Was there litigation that arose out of that employment?

A. I just departed from there.

Q. Do you understand my question?

A. Repeat it.

Q. Was there any kind of a lawsuit.

A. There was - I don't think I'm even supposed to be speaking of it. I'm not really sure about that.

Q. Okay. So are you refusing to answer any questions about whether or not there was litigation between you and that employer?

A. Yes.

Counsel for the employer then questioned if there was any privilege being asserted. Mr. Alikhani

answered, "No" and it was again asserted that the question would be certified.

7. The employer also sought this court's direction regarding questions provided to the claimant on page 53 of the deposition. The claimant was asked about his living arrangement having previously testified that he lived by himself. However he then testified that he lives in an apartment. The following exchange occurred:

Q. Whose apartment is it?

A. Just one of my friend's apartment.

Q. Who?

A. A social friend that I have.

Q. Are you refusing to answer whose apartment it is?

A. Yes.

Finally, on page 54 when asked about the truck the claimant testified on in page 52, he was asked:

Q. So where is your truck located?

A. Where it's located is my personal information.

8. Pursuant to the Fla. R. Pro. Work. Comp. 60Q-6.114(2)(a), depositions of witnesses or parties may be taken and used in the same manner and for the same purposes as provided in the Florida Rules of Civil Procedure. The Judge of Compensation Claims, pursuant to subsection (5) of that rule, may enter Orders to effectuate discovery, including orders compelling discovery and

orders imposing sanctions as provided in the Florida Rules of Civil Procedure for failure to comply with or for using discovery in methods not specifically authorized by statute.

9. Rule 60Q-6.125 allows the Judge of Compensation Claims to enter sanctions for any conduct determined to constitute a violation of rules. Specifically the court, pursuant to F.S. §440.33(1) allows this court to do all things conformable to law which may be necessary to enable the judge to effectively discharge the duties of his or her office. Subsection (2) of that section allows the Judge of Compensation Claims to hear evidence in a summary manner regarding anyone under oath refusing to be examined and punish such person in the same manner and to the same extent as for contempt committed before the court.

10. To find that the actions of someone refusing to answer questions in a deposition merit a sanction, I am required to determine whether or not the deponent asserted a lawful privilege (i.e. attorney/client work product or Fifth Amendment privilege), to determine whether or not their refusal to answer questions was due to misunderstanding or unfamiliarity with the question being asked or whether the refusal to answer was willful and designed to obstruct otherwise proper discovery.

11. The reading of the deposition in its entirety leads me to the conclusion that the claimant's refusal to answer was willful. It appears that the claimant's refusal was done after having

numerous opportunities to consult with his attorney regarding the propriety of the questions being asked by the counsel for the employer. Counsel for the employer, rather than engage in pointless or wasteful bantering back and forth with the witness, indicated to the witness that the questions were reasonably designed to lead to admissible evidence and/or otherwise relevant.

Once it became clear the claimant was refusing to answer what appeared to be proper questions, counsel for the employer certified these questions and ultimately brought them before the Judge of Compensation Claims.

12. I find that the claimant's willful refusal to answer these questions has frustrated the discovery process. I find that the issuing of sanctions is warranted in the instant matter. The issue of sanctions in this regard rose to a level, despite the suggestion of claimant's counsel would not be dealt with a mere reprimand. I find that monetary sanctions to be paid to the employer by the claimant are proper. I would specifically note the following sanction is due from the claimant only and not claimant's counsel.

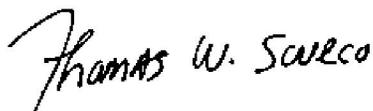
13. In the instant matter, counsel for the employer indicated they had incurred costs in obtaining the claimant's written deposition. Although additional costs may likely incur due to this willful refusal of the claimant, it is difficult to determine an exact amount. For this reason, I impose a monetary sanction of

\$300.00 to be paid by the claimant directly to the employer. Additionally, the employer is entitled to re-depose the claimant, obtain answers to the certified questions and engage in additional discovery depending upon the answers given in those questions.

WHEREFORE, it is Ordered and adjudged that claimant shall pay within 14 days the amount of \$300.00 directly to the employer for willful failure to properly participate in discovery. Payment of this amount within 14 days may be made to the employer's counsel.

**DONE and ORDERED** in Orlando, Orange County, Florida.

This 9<sup>th</sup> day of February, 2015



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**Thomas W. Sculco**  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
Orlando District Office  
[www.jcc.state.fl.us](http://www.jcc.state.fl.us)

### **CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that the Order was entered by the Judge of Compensation Claims and was electronically served on the parties through their respective attorneys.



2/9/2015

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**Marla Miller**  
**District Clerk**  
**Orlando District Office**