

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

Jorge Correa,	)	
	)	
Employee/Claimant,	)	
	)	
vs.	)	OJCC Case No. 08-015229TGP
	)	
MC Professional Window Cleaning,	)	Accident date: 4/29/2008
Inc./Frank Crum Insurance,	)	
Inc./Broadspire,	)	Judge: Thomas G. Portuallo
	)	
Employer/ Carrier/Servicing Agent.	)	

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**ORDER ON EMPLOYER/CARRIER’S MOTION TO TAX COSTS**

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After proper notice to all parties, this cause came to be heard before the undersigned Judge of Compensation Claims on February 15, 2011, on the Employer/Carrier’s Motion to Tax Costs, filed July 7, 2010. The Claimant, Jorge Correa, was represented by Attorney Jesus Ravelo. The Employer/Carrier, Frank Crum/Frank Winston Crum Insurance, was represented by Attorney Zal Linder.

**Statement of the Case**

The Claimant filed a Petition for Benefits on September 28, 2009, requesting various benefits including temporary disability from December 8, 2008, to present, along with penalties, interest, costs and attorney’s fees.

The claim for temporary disability benefits was heard by the undersigned Judge of Compensation Claims at a Final Hearing on June 24, 2010. Thereafter, by Order dated June 30,

2010, this Court denied the claim for temporary disability benefits, penalties, interest, costs, and attorney's fees.

### **Issues and Defenses**

On July 7, 2010, the Employer/Carrier filed a Motion to Tax Costs pursuant to both Florida Statutes §440.34(3) (2003) and F. A. Richard and Associates and Palm Beach County School Board v. Fernandez, 975 So. 2<sup>nd</sup> 1224 (Fla. 1<sup>st</sup> DCA 2008). The Employer/Carrier sought costs in the amount of \$3,774.74 as itemized in their Affidavit in Support of Motion to Tax Costs filed on July 7, 2010.

The Claimant objected to the Motion to Tax Costs and raised specific objections to the amount of costs claimed by the Employer/Carrier.

The Claimant's objections included the following:

1. Pursuant to the Uniform Guidelines for Taxation of Costs charges for mediation would not be recoverable. Said charge is total \$962.50.
2. Costs of court reporter to attend merit hearing should also not be taxed against Claimant pursuant to the Uniform Guidelines. Said charge is total \$245.00.
3. Claimant disputes costs alleged in affidavit and demand proof of alleged costs.
4. Claimant disputes recovery of deposition costs by Employer/Carrier pursuant to Florida Statutes §440.30.
5. Claimant disputes any recovery for conferences with doctors as not provided under Uniform Guidelines.

At the Evidentiary Hearing, the Claimant modified defense # 3 above, and agreed that the Affidavit in Support of Taxable Costs may be admitted into evidence without objections to authentication or hearsay.

### **Documentary Evidence**

At the February 15, 2011, Evidentiary Hearing the following exhibits were accepted into evidence:

JCC's Exhibit #1	Pretrial Order on Employer/Carrier's Verified Motion to Tax Costs, dated August 2, 2010.
JCC's Exhibit #2	Uniform Pretrial Stipulation and Pretrial Compliance Questionnaire, filed October 25, 2010.
JCC's Exhibit #3	Employer/Carrier's Motion to Tax Costs, filed July 7, 2010.
JCC's Exhibit #4	Claimant's Response to Motion to Tax Prevailing Party Costs, filed August 4, 2010.
JCC's Exhibit #5	Order Denying Disability Benefits, dated June 30, 2010.
Employer/Carrier's Exhibit #1	Affidavit in Support of Motion to Tax Costs, attached to Employer/Carrier's Motion to Tax Costs, filed on July 7, 2010.

### **Findings of Fact and Conclusions of Law**

In making my findings of fact and conclusions of law in this matter, I have carefully considered and weighed all the evidence presented to me including the documentary exhibits and I have resolved any and all conflicts therein. After having carefully considered the arguments of the parties and all evidence presented in this case, I make the following findings of fact and conclusions of law:

1. The stipulations of the parties as listed above and as identified in the Pretrial Questionnaire are approved and adopted by me.
2. This Court has jurisdiction over the subject matter and over the parties.

**Prevailing Party**

3. After reviewing the totality of evidence in this case, I find that the Employer/Carrier is entitled to recover costs from the Claimant pursuant to §440.34(3), Florida Statutes (2003). I find the Employer/Carrier was the prevailing party in a claim for temporary disability benefits that was pursued by the Claimant resulting in an Order of this Court dated June 30, 2010, entitled “Order Denying Disability Benefits”.

**Statewide Uniform Guidelines for Taxation of Costs in Civil Actions**

4. Pursuant to the Rules of Procedure for Workers’ Compensation Adjudication, Rule 60Q-6.124(3)(e), I have considered the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions in making all decisions in the contents of this Order.

**Deposition Costs**

5. After reviewing the totality of evidence in this case, I find that the Employer/Carrier is entitled to recover the cost of depositions as set forth in the Affidavit in Support of Motion to Tax Costs. These depositions include: the depositions of Dr. Lozman, taken on April 16, 2010; the deposition of Dr. Ciliberti, taken on April 8, 2010; the deposition of the Claimant taken on April 23, 2010; the deposition of the Claimant taken on April 29, 2008; the deposition of Dr. Friedman, taken on May 4, 2010; the deposition of Dr. Herkoswitz taken on May 25, 2010; and the deposition of Dr. Arias taken on May 25, 2010.

6. I find that each of these depositions were relevant to the issues determined by this Court in the Final Order dated June 30, 2010. I note that each of these depositions were admitted into evidence and relied upon by the undersigned Judge of Compensation Claims when denying disability benefits pursuant to the June 30, 2010, Final Order. Additionally, I find that the costs

of these depositions are reasonable.

7. I overrule the Claimant's objection to the inclusion of deposition costs as taxable costs under the authority Florida Statutes §440.30 and Florida Statutes §440.34(3). I find that the Claimant's argument on this issue is not logical or reasonable.

8. Instead, under the particular circumstances of this case, I find that inclusion of the costs of depositions as taxable costs, to be paid by the Claimant under Florida Statutes §440.34(3) (2003), is a reasonable and logical conclusion consistent with both statutory law and case law applicable to workers' compensation proceedings.

9. I note the broad language of Florida Statutes §440.34(3) (2003) which states:

If any party should prevail in any proceedings before a judge of compensation claims or court, there shall be taxed against the nonprevailing party the reasonable costs of such proceedings, not to include attorney's fees....

10. Likewise, I note the First District Court of Appeal in the case of Oscar Hernandez v. Manatee County Government/Commercial Risk Management, Inc., 50 So. 3<sup>rd</sup> 57 (Fla. 1<sup>st</sup> DCA 2010), awarded the cost of depositions to the Employer/Carrier under the authority of Florida Statutes §440.34(3) (2003), consistent with the Statewide Uniform Guideline for Taxation of Costs in Civil Actions.

11. I accept all arguments raised by the Employer/Carrier at Hearing in support of an award of the cost of depositions as most logical, reasonable, and consistent with the totality of evidence in this case.

### **Conferences With Doctors**

12. I find that the cost of conferences with physicians, including the Employer/Carrier's conferences with Dr. Lozman and Arias, are taxable costs and are the

responsibility of the Claimant in this case. I find that the costs of these doctor conferences are reasonable, relevant to the subject litigation, and directly related to the defense of the Petition for Benefits at issue.

13. In making this finding, I accept the Employer/Carrier's arguments that these particular doctor conferences were generated in relation to physicians who testified via deposition at the Final Merit Hearing. I note this Court specifically relied upon the testimony of Dr. Lozman and Dr. Arias in the contents of the June 30, 2010, Order Denying Disability Benefits.

14. I note that Dr. Lozman was the Claimant's authorized, alternative, treating orthopedic surgeon. Likewise, I note that Dr. Arias was the Claimant's authorized psychologist. As such, I find it is logical and reasonable to determine that the cost of conferences with these two physicians is directly related to the issues determined by the undersigned in the contents of the Order Denying Disability Benefits. Again, I note the Court specifically relied upon subsequent deposition testimony of Dr. Lozman and Dr. Arias.

15. I reject the Claimant's argument that the cost of doctor conferences for physicians who testify should not be taxed pursuant to the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. Instead, I find that the taxation of costs for doctor conferences, under the particular circumstances of this case, is consistent with the Guidelines.

#### **Private Mediation Costs**

16. I overrule the Claimant's objection and find that the cost of private mediation in this case is recoverable by the Employer/Carrier as a taxable cost. In making this finding, I note that it is not disputed by the parties that a private mediation with Mediator James B. Flax took

place on February 2, 2010. Additionally, I note it is not disputed by the parties that the private mediation occurred in this case as a result of a court order compelling the parties to attend a private mediation. I find that this is not a case where the parties stipulated or agreed to attend a private mediation in the place of state mediation. Instead, I find that all costs associated with the court ordered private mediation, including the interpreter costs of \$275.00, are reasonable, relevant to the subject litigation, and directly related to the Claimant's claim for disability benefits, resulting in this Court's Order of June 30, 2010, denying same.

17. Furthermore, in light of the court order compelling the parties to complete a private mediation in this case, I find that all costs associated with the court ordered private mediation, including the interpreter costs, were necessarily incurred in defense of the Claimant's claim for temporary disability benefits which was ultimately denied by this Court.

18. I note that an award of costs associated with mediation fees and expenses is consistent with the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, Part II-A, which states that mediation fees and expenses are litigation costs that "may" be taxed as costs.

#### **Court Reporter at Trial**

19. I sustain the objection raised by the Claimant to the cost of the court reporter to attend the Merit Hearing, said charges total \$245.00.

20. I reject the Employer/Carrier's argument that this Court requested that the parties supply a court reporter to be present at the Final Hearing of June 24, 2010. I find this argument is not supported by any evidence in this case and is not logical or reasonable considering the totality of circumstances surrounding this case. In making this finding, I note that the Official Record of Proceedings in this case was the digital Record maintained by the undersigned Judge

of Compensation Claims.

21. I note the “purpose and application” of the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions which states:

...the trial court should exercise that discretion in a manner that is consistent with the policy of reducing the overall costs of litigation and of keeping such costs as low as justice will permit. With this goal in mind, the trial court should consider and reward utilization of innovative technologies by a party which subsequently minimizes costs and reduce the award when use of innovative technologies that were not used would have resulted in lowering costs...

22. I find there is no requirement for a court reporter to be present at the Final Merit Hearing in this case. I find that the presence of the court reporter was not relevant or reasonably related to the defense of this case.

23. I find that the Employer/Carrier offered no reasonable explanation for the attendance of a Court reporter at the Final Merit Hearing in addition to the digital Record maintained by the Judge of Compensation Claims.

**Remaining Costs Claimed**

24. I find all remaining costs claimed by the Employer/Carrier, as specifically set forth in the Affidavit in Support of Motion to Tax Costs, Employer/Carrier’s Exhibit #1, are taxable and the responsibility of the Claimant. In making this finding I note the Claimant raised no clear or specific objection to the remaining costs. Furthermore, based on the totality of circumstances of this case, I find all remaining costs are reasonable, relevant to the subject litigation, and directly related to the issues determined by the undersigned in the contents of the Order Denying Disability Benefits.

**WHEREFORE it is ORDERED and ADJUDGED as follows:**

1. The Employer/Carrier is entitled to the recovery of taxable costs that are reasonable and related to the Employer/Carrier's successful defense of issues determined by this Court in the Order Denying Disability Benefits dated June 30, 2010.

2. I find that the Claimant shall pay the Employer/Carrier \$3,529.74 in taxable costs pursuant to §440.34(3) (2003).

3. I find that any arguments or issues not raised at the time of Hearing are considered waived.

DONE AND ORDERED this 1<sup>st</sup> day of March, 2011, in Daytona Beach, Volusia County, Florida.



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Thomas G. Portuallo  
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order has been electronically transmitted via email to the attorneys of Record and sent by U.S. mail to the parties as listed below on this 1<sup>st</sup> day of March 2011:

*Debra Smith*

\_\_\_\_\_  
Executive Secretary to the Judge of  
Compensation Claims

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