

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FT. MYERS DISTRICT OFFICE

Teresa Jackson,
Employee/Claimant,

OJCC Case No. 13-021387JAW

vs.

Accident date: 8/17/2012

Buckhead Beef Florida / Royalty
Foods/Corvel Corporation,
Employer/Carrier/Servicing Agent.

Judge: Jack A. Weiss

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ORDER AWARDING CONTESTED COSTS

This matter came before the Judge of Compensation Claims for hearing on September 21, 2021, conducted via Zoom video conference, on Employer/Carrier's verified motion to tax costs filed July 30, 2021 (DN 258). Claimant's verified response in opposition to the motion was filed August 18, 2021 (DN 261). Laurie Thrower Miles, Esquire, appeared for Claimant. Timothy F. Stanton, Esquire, appeared for EC.

In addition to the verified motion and response, also admitted as exhibits for the hearing was the June 1, 2021 Final Compensation Order (DN 254); petition for benefits filed November 18, 2020 (DN 223); Claimant's deposition (DN 242); supplemental OJCC decisions in support of Claimant's position (DN 278); and notice of filing EC's exhibits, with emails (DN 279).

EC seeks to tax costs in the amount of \$507.45, asserting they were the prevailing party from the May 27, 2021 final hearing, pursuant to the June 1, 2021 Final Compensation Order. Claimant asserts that she was the prevailing party from the November 18, 2020 petition for benefits, as she requested a follow-up appointment with a psychiatrist and that did not occur until well after 30 days. Considering the evidence and argument before me, I agree with EC that they

are the prevailing party. This is without prejudice to Claimant seeking attorney fees and costs from her verified motions, filed August 18, 2020, for which I reserve jurisdiction, and are scheduled to be heard on October 20, 2021.

Section 440.34(3) provides:

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.

On November 18, 2020 Claimant filed a petition for benefits seeking "authorization of a follow-up appointment with Claimant's authorized treating physician, Dr. Lakdawala." However, subsequent to Claimant's request to return to her authorized treating physician in Tampa she moved from Winter Haven, Polk County to Oakland Park, Broward County. Thus, at the time of the May 27, 2021 final hearing, the parties tried by consent Claimant's request for a psychiatrist in Broward County that meets the requirements of section 440.13. EC defended that they had offered and scheduled an appointment for Claimant with Coral Springs psychiatrist Dr. Thomas Goldschmidt. In the June 1, 2021 Final Compensation Order I agreed with EC and I denied the claim, as I found EC's offer of Dr. Goldschmidt complied with section 440.13. Accordingly, I find now that EC prevailed in the May 27, 2021 proceeding before me, and EC is therefore entitled to their reasonable costs from Claimant.

Pursuant to Rule 60Q-6.124(3)(e) I shall consider the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions in determining the reasonableness of an award of cost reimbursement. Here EC seeks \$156.25 for the cost of the adjuster's deposition, and \$351.20 for the cost of Claimant's supplemental deposition. Claimant argued in her verified response that EC

was unable to demonstrate a relationship of either cost to the argument on which they prevailed. However, at the hearing Claimant agreed the adjuster's deposition was related to the issue EC prevailed upon, if I found EC was in fact the prevailing party.

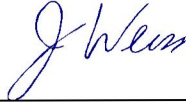
I note the Uniform Guidelines places the burden on the moving party to show that all requested costs were reasonably necessary either to defend or prosecute the case at the time the action precipitating the cost was taken. Here Claimant conceded at the hearing that at the time Claimant's supplemental deposition was taken there were pending two petitions for benefits. That certainly sounds to me like an admission the cost of the Claimant's supplemental deposition was reasonably necessary at the time it was taken. But Claimant further argues the Claimant's supplemental deposition, unlike the adjuster's deposition, was not admitted into evidence at the May 27, 2021 final hearing.

The Statewide Guidelines provide that the original and one copy of the deposition and court reporter's per diem for all depositions are litigation costs that should be taxed. There is no requirement in the Statewide Guidelines that the depositions be admitted into evidence. Moreover, in the notice of filing that accompanied Claimant's supplemental deposition, EC indicated the deposition was for impeachment and rebuttal purposes only. At the final hearing Claimant chose not to testify, such that no impeachment and rebuttal was proper.

Taking the above into consideration, I find the Claimant's supplemental deposition is a reasonable cost properly taxable against Claimant. Therefore, it is:

ORDERED AND ADJUDGED Claimant shall reimburse Employer/Carrier reasonable costs in the amount of \$507.45.

DONE AND SERVED this 22nd day of September, 2021, in Ft. Myers, Lee County,
Florida.



Jack A. Weiss
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