

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

Maria Hernandez,
Employee/Claimant,

OJCC Case No. 19-011822SMS

vs.

Accident date: 4/24/2019

Cuban Manna Brickell LLC d/b/a Sergio's
Cuban Café and Grill and Associated
Industries Ins.,
Employer/Carrier/Servicing Agent.

Judge: Sylvia Medina-Shore

**AMENDED EVIDENTIARY HEARING ORDER DETERMINING ENTITLEMENT
AND AMOUNT OF E/C PAID ATTORNEY'S FEE AND COSTS**

THIS CAUSE came before the undersigned Judge of Compensation Claims for a fee and costs hearing, via zoom platform, upon Claimant's verified petition for fees and costs against E/C filed 8/23/2021. The claimant is represented by Monica De Feria Cooper, Esquire. The employer and carrier (E/C) are represented by Kate Albin, Esquire.

On 11/10/2021, an evidentiary hearing order determining entitlement and amount of E/C paid attorney's fee and costs was entered. On 11/12/2021, E/C filed their motion to vacate and for re-hearing of the 11/10/2021 order. Claimant did not file a response. Having considered E/C's motion for re-hearing and case law, the instant amended evidentiary hearing order ensues.

Documentary Exhibits:

Claimant-

1. Verified petition for attorney's fee and costs filed 8/23/2021 (DE#66).

E/C-

1. Response to verified petition for attorney's fees and costs filed 9/15/2021 (DE#69).
2. Response to petition for benefits filed 9/20/2019 (DE#25).
3. Mediation settlement agreement dated 9/4/2021 (DE#22).

Findings of Facts and Conclusions of Law:

DISPUTED ENTITLEMENT TO E/C PAID ATTORNEY'S FEES-

1. **PFB filed 8/23/2019-** Claimant's attorney claims entitlement to an E/C paid attorney's fee for securing authorization of laser therapy pursuant to the 8/23/2019 PFB. Attorney De Feria Cooper testified that although E/C authorized the laser therapy within 30 days of the PFB, the appointment took place outside the 30th day. Accordingly, attorney De Feria Cooper testified she is owed an E/C paid attorney's fee. E/C disagrees.
2. On 9/4/2021, the parties attended state mediation wherein the claim for pulse dye laser and thulium laser (PFB 8/23/2019) was not resolved. However, as of 9/20/2021, E/C authorized the laser therapy via e-mail to attorney De Feria Cooper and response to PFB. E/C stipulated to reimburse claimant all reasonable costs for securing the laser therapy.
3. I reject attorney De Feria Cooper's testimony that in order for E/C to avoid owing an attorney's fee, the laser therapy appointment was required to take place within 30 days of receipt of the PFB. To the contrary, I find case law only mandates that the appointment be timely authorized. *See, Dorsch, Inc. v. Hunt*, 15 So.3d 836, 837 (Fla. 1st DCA 2009) citing to *Butler v. Bay Center/Chubb Ins. Co.*, 947 So.2d 570 (Fla. 1st DCA 2006) and *Sansone v. Crum*, 201 So.3d 1289 (Fla. 1st DCA 2016).
4. Moreover, attorney De Feria Cooper admitted in her fee hearing testimony that she did not know when the laser therapy appointment was scheduled by the adjuster. She only knew when E/C paid for said laser therapy per the payout.
5. I find E/C authorized the claimed laser therapy twenty-nine (29) days after the filing of the 8/23/2019 PFB. As E/C timely authorized the laser therapy, I find there is no fee entitlement from E/C pursuant to F.S. 440.34(3).
6. Likewise, as E/C stipulated to claimant's attorney entitlement to reasonable costs for obtaining the pulse dye/thulium laser therapy within 30 days (specifically 29 days), I find claimant is not entitled to an E/C paid attorney's fee for securing the reasonable costs.
7. **PFB filed 12/18/2019-** Claimant's attorney claims entitlement to an E/C paid attorney's fee for securing payment of TPD benefits pursuant to 12/18/2019 PFB. Attorney De Feria Cooper testified that while E/C filed a 12/19/20219 response to the

PFB indicating “E/C has continued to timely pay the claimant biweekly TPD since 11/22/2019,” in fact the payout reflects that TPD benefits for the period of 11/22/2019 to 12/5/2019 were paid on 12/30/2019. E/C denied entitlement to costs. Therefore, attorney De Feria Cooper seeks E/C paid attorney’s fees and costs. E/C disagrees.

8. E/C attorney, Andrew Borah, testified via his verified response to claimant’s verified petition that claimant was initially paid TPD benefits on 11/27/2019 for the period of 11/22/2019 to 12/5/2019. However, as claimant failed to cash the check, E/C placed a stop payment on the check and reissued the check on 12/30/2019, well within the 30 days of filing of the 12/18/2019 PFB. Attorney De Feria Cooper testified she did not recall or know about the stop payment or the reason for it.
9. I accept Mr. Borah’s testimony as it is consistent with the payout sheet, reflecting a stop payment on 12/27/2019 and reissuance of the check on 12/30/2019. I further accept Mr. Borah’s testimony that the stop payment was necessary due to claimant’s failure to cash the timely issued TPD check, outside the control of E/C. Accordingly, I find E/C paid claimant the claimed TPD benefits within thirteen (13) days from the filing of the PFB and does not owe claimant’s attorney an attorney’s fee or cost pursuant to F.S. 440.34(3).

DISPUTED FEE AMOUNT OWED BY E/C:

10. **PFB filed 5/9/2019-** In the 9/4/2021 mediation settlement agreement, E/C stipulated to claimant’s attorney entitlement to E/C paid attorney’s fees and costs for securing \$66.41 in penalties and interest. The amount of the fee and costs is in dispute.
11. Attorney De Feria Cooper seeks an attorney’s fee of \$11,305.00 based on expending 32.3 hours in securing benefits. At the fee hearing, attorney De Feria Cooper deducted .9 of her hours agreeing with the deductions of attorney Borah. Therefore, attorney De Feria Cooper testified she expended 31.3 hours in securing the benefits.
12. Attorney Borah on the other hand testified in his verified response to claimant’s verified petition that attorney De Feria Cooper reasonably expended 11.10 hours in securing the benefits and should be awarded a fee of \$2,775.00 based on an hourly rate of \$250.00 after considering the *Lee Engineering* factors.

LEE ENGINEERING FACTORS-

13. (a)- The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.
14. I find nothing novel, difficult, or unique regarding the prosecution of the claims.
Claimant's attorney simply filed the required PFBs and only the deposition of the claimant was taken. I find the skill required is that of a competent workers' compensation attorney.
15. I have considered claimant's time and E/C's deductions of said time. On the first page of claimant time records containing time expended 5/2/2019 to 5/13/2019, I find claimant expended *4.2 hours*, deducting the .1 on 5/5/2019 which claimant agrees as not related to the benefits secured. On the second page, I find claimant expended *.9 hours*, deducting entries dated 5/15/19, 5/16/19, 5/16/19, 5/22/19 (.1), 6/4/19, 6/18/19- 6/20/19 and 7/16/19 accepting E/C's deductions. On the third page, I find claimant expended *8.9 hours*, deducting entries dated 8/26/19 (.3), 8/6/19 (.9), 8/6/19 (.2), 8/23/19 (.9), 8/26/19 (deducting .2) and 2.9 hours after the mediation per E/C's deductions. I find claimant is not entitled to any of the hours listed on pages 4 and 5 as E/C stipulated to fee entitlement at the mediation. Therefore, I find claimant *expended a total of 14.0 hours* in securing the benefits listed herein. I find this factor positive.
16. (b)- The fee customarily charged in the locality for similar legal services.
17. Attorney De Feria Cooper testified the fee customarily charged in this locality is \$300.00 to \$400.00, requesting an hourly fee of \$350.00 in the instant case. In contrast, attorney Borah testified in his verified response to claimant's verified petition that the applicable range is \$250.00 to \$300.00. Based on the facts of the instant case, I accept attorney Borah's hourly fee range. I find this factor neutral.
18. (c)- The amount involved in the controversy and the benefits resulting to the claimant.
19. The amount involved in the controversy is \$66.41. I find this factor is negative.
20. (d)- The time limitations imposed by the claimant or the circumstances.
21. Attorney De Feria Cooper admits there were no time limitations imposed by the claimant ore the circumstances. I find this factor is negative.

22. (e)- The experience, reputation, and ability of the lawyer or the lawyers performing the services.
23. I find this factor is positive. I find the lawyers in this case are experienced and competent in workers' compensation law.
24. (f)- The contingency or certainty of a fee.
25. I find this factor is positive as Attorney De Feria Cooper's fee is contingent upon her success.
26. I find there are three positive factors, one negative factor and two neutral factors after applying the facts of the instant case to the *Lee Engineering* factors. As such, I find an upward deviation from the statutory fee of \$13.28 is warranted. Based on the totality of the facts of the present case as applied to the *Lee Engineering* factors, I find attorney De Feria Cooper is entitled to a fee of \$4,200.00.

COSTS-

27. Attorney De Feria Cooper is aware that E/C agreed to entitlement to reasonable costs regarding the PFBs filed 8/23/19 and 5/9/19. Yet, attorney De Feria Cooper failed to attach an itemization of costs to her verified petition as required by 60Q-6.124(3)(a)6. Accordingly, the undersigned cannot award the costs sought within attorney De Feria Cooper's verified petition.

WHEREFORE, IT IS ORDERED:

1. E/C shall pay attorney De Feria Cooper \$4,200.00 in attorney's fees.
2. The claims for costs are denied.

DONE AND E-MAILED TO THE ATTORNEYS OF RECORD AND THE CARRIER THIS 19th DAY OF NOVEMBER OF 2021. THE ATTORNEYS SHALL PROVIDE A COPY OF THE INSTANT ORDER TO THEIR RESPECTIVE CLIENTS UPON RECEIPT OF IT.



Sylvia Medina-Shore
Judge of Compensation Claims

COPIES FURNISHED:

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