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## FLORIDA WORKERS' COMPENSATION CASE LAW UPDATE: TAXABLE VS. NON-TAXABLE COSTS

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In Florida, when the injured employee's attorney files a verified motion for attorney's fees and costs seeking reimbursement of costs associated with a previously filed petition for benefits, what costs can the injured employee be reimbursed for? Are the costs considered taxable or non-taxable?

Florida Statute Section 440.34(3) "reflects an intent that the party who prevails on significant issues at hearing should be entitled to be made whole for the costs on prevailing on that issue to be paid by the party that lost that significant issue." See *Orlando Perez-Garcia, Melvin v. B&B Interior Systems, Inc./Bridgfield Employers Ins. Co., JNP Services, Inc./Frank Winston Crum Ins. Co.*, OJCC Nos. 14-000055RJH; 14-000056RJH (Order Determining Taxable Costs dated December 1, 2016.)



"The taxation of costs is a matter within the broad discretion of the trial judge." *Id.* Typically, judges of compensation claims are "guided by the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions (guidelines). Generally speaking, taxable costs would typically include sums expended for transcripts of depositions, medical records, and court reporters. Taxable deposition costs do not include such items as condensed transcripts, E-transcripts, or ASCII discs." *Id.* citing *Robbins v. McGrath*, 955 So.2d 633 (Fla. 1st DCA 2007); *Coleman v. American Airlines*, 183 So.3d 1065 (Fla. 1st DCA 2016).

In a recent decision, Judge Rita Young of the Tampa office of Judges of Compensation Claims opined that in accordance with Florida Statute Section 440.192(1), "*An employee represented by an attorney shall file by electronic means approved by the Deputy Chief Judge. An employee not represented by an attorney may file by certified mail or by electronic means approved by the Deputy Chief Judge.*" See *Myrthil, Vernio v. Advanced Airfoil Components/Charter Oak Fire Ins. Co./Travelers Ins.*, OJCC No. 19-024154RLY (Final Evidentiary Order Denying Verified Motion for Attorney's Fees and Costs dated January 15, 2020.) Judge Young cited to *In re Amendments to Uniform Guidelines for Taxation of Cost*, 915 So.2d 612 (Fla. 2005) stating "the trial court should exercise that discretion in a manner that is consistent with the policy of reducing the overall costs of litigation and keeping such costs as low as justice will permit.' The guidelines further state, '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.' The guidelines further place the burden of proof 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. Reading the Amendments to the Uniform Guidelines for Taxation of Costs in pari materia with FL.STAT. Section 440.192's directive that claimants represented by an attorney shall file by electronic means their petitions for benefits and that unrepresented employees may file by certified mail, it is apparent that the legislature and the Florida Supreme Court have determined that the certified mailing of a Petition for Benefits by an attorney is unreasonable when an alternate means is available." *Id.*

Judge Young held that because "the Office of Judges of Compensation Claims Deputy Chief Judge has approved the Judge of Compensation Claims E-Filing system as referenced in FL. STAT. Section 440.192(1) for filing Petitions for Benefits as well as any other documents in proceedings before a Judge of Compensation Claims. I therefore find that the costs incurred for mailing Petitions for Benefits by certified mail to the Carrier and Employer were unreasonably incurred and were not in compliance with the directives of FL. STAT. 440.192 nor the Uniform Guidelines for Taxation of Costs directing attorneys to use technology to minimize costs." *Id.*

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Advances in technology with the EJCC system in Florida and the ability to electronically serve a copy of the petition for benefits to the employer/carrier, the injured employee's reimbursement for service of a petition for benefits via certified mail to the employer/carrier is no longer deemed a cost the injured employee can be reimbursed for if the claimant is able to e-serve a copy. Therefore, when you are in receipt of a verified motion for attorney's fees and costs from an injured employee, confirm whether the costs are causally related to the petitions for benefits which were ultimately dismissed and confirm that the entries are specific, not vague. Please refer to the Statewide Uniform Guidelines for Taxation of Costs for determination as to what costs "were reasonably necessary either to defend or prosecute the case at the time the action precipitating the cost was taken," which shall include depositions, documents and exhibits, expert witnesses, witnesses, and court reporting costs other than for depositions and may include mediation fees and expenses, reasonable travel expenses, and electronic discovery expenses.

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