

Anderson v. North Port Services of Florida
Case No. 1D14-2255 (Fla. 1st DCA 10/29/2014)

Facts:

Unrepresented Claimant appealed Final Order from JCC concluding she has fully and finally settled her workers' compensation claim stemming from a 6/30/2012 accident. JCC concluded that Claimant failed to raise or establish a legally cognizable basis for avoiding the terms of the settlement. After receiving Claimant's Amended Initial Brief, the Court entered an Order advising that the appeal is being considered for summary affirmance under Florida Rule of Appellate Procedure 9.315(a).

Issue:

Whether Appellant stated sufficient grounds for the JCC's Order to be reversed on appeal.

Outcome and Analysis:

Court held Claimant failed to raise a preliminary basis for reversal of the JCC's Order determining there was a settlement and affirmed the JCC's finding that her case is fully and finally settled.

In her brief, Claimant only argued that the settlement is not sufficient to meet her financial needs. The Court determined Claimant's argument lacked any record support or legal authority that would permit the granting of the requested relief.

Court advised that the party bringing the appeal has the duty to make error clearly appear and Court has no duty to answer questions raised in a perfunctory manner. Claimant has the burden to demonstrate error on the record and Court is under no obligation to construct or answer a legal question not properly argued by the Appellant.

Take Away:

The grounds for the appeal must be supported by evidence from the record as articulated by the Appellant; absent such record evidence as presented by Appellant, the Appellate Court will deny the request for relief.

Hancock v. Suwannee County School Board
Case No. D14-0954 (Fla. 1st DCA 10/31/2014)

Facts:

In the morning of Employer/Carrier's IME, Claimant's Counsel for the first time advised the doctor that a videographer would be present for the exam. The doctor then declined to conduct the IME in the presence of a videographer without an additional advance payment of \$1,500. The request for the advance was not resolved prior to the IME and Claimant appeared with her videographer at the exam, only to then be turned away by the doctor as he refused to perform the IME without payment of the advance, and subsequently billed the Employer/Carrier a \$600 cancellation fee/no-show fee for the missed examination.

In the Order on Employer/Carrier's Motion to Tax Costs, the JCC ordered Claimant to pay ½ of the physician's cancellation fee as he found Claimant's declaration of her intention to videotape the IME to be untimely. At the same time, JCC also held he had no jurisdiction to address the reasonable of the doctor's request for the \$1,500 advance and Claimant had no standing to challenge this charge. Nonetheless, JCC advised Claimant shall be responsible for the payment of any additional fees assessed by the Employer/Carrier's IME physician due to her request for the videographer to be present for the exam. Claimant then filed a Petition for Writ of Certiorari.

Issue:

Whether the JCC has jurisdiction to address fees imposed by a physician performing an IME and whether the imposition of the \$1,500 fee by the IME physician was permissible.

Outcome and Analysis:

The Court determined the JCC erred in declaring he did not have jurisdiction to address the doctor's imposition of the \$1,500 fee to conduct the IME in the presence of a videographer. A JCC is empowered by F.S. 440.33(1) to preserve and enforce order in workers' compensation proceedings and do all things comfortable to law in carrying out such duties. The Court advised that pursuant to the powers conveyed by this Statute, the JCC may enter protective orders or other orders setting the parameters of discovery, and such duties would require the JCC to resolve the dispute as to whether the doctor's requirement for a \$1,500 advance prior to performing the IME in the presence of a videographer was appropriate.

A physician undertaking the role as an IME is not at liberty to demand that payment be made on their terms, but is instead regulated by statutorily mandated reimbursement standards pursuant to F.S. 440.13(12)(d). The JCC is required to exclude the medical opinions of an IME physician who refuses to be bound by the proper legal billing process in the performance of services related to the IME.

The Court was unable to address whether the fee imposed by the IME physician was appropriate as the record contained no foundational information as to how the doctor arrived at the additional video fees or how such fees were billed or documented. Furthermore, the Court was not yet able to determine which party, if any, is financially responsible for the doctor's additional fee related to the videographer's attendance at the examination, as well as whether the JCC properly ordered Claimant to pay half of the doctor's cancellation fee.

The JCC's Order was reversed and remanded for additional proceedings for the JCC to determine whether the IME physician's demand for a \$1,500 fee related to the videographer's attendance at the exam was proper and appropriate. On remand, the JCC was also instructed to address whether Claimant should be assessed half of the doctor's cancellation fee and which party, if any, should be responsible for the doctor's videographer fee at any future exam, after addressing the initial question of whether the doctor's imposition of the videographer fee was proper and appropriate.

Take Away:

An IME's fees are regulated by Chapter 440 and the JCC has jurisdiction to address the propriety and reasonableness of any fee imposed by a physician related to their performance of the IME. *Precautionary remark: the claimant's attorneys should think carefully if "feeling lucky" because if this device is used to enhance ECs costs toward leveraging a settlement, for instance, claimant's failure to prevail will then backfire as those same costs will be claimant's responsibility.

Lane v. Workforce Business Services, Inc.
Case No. 1D14-0959 (Fla. 1st DCA 11/12/2014)
An MKRS Law Case

Facts:

The Employer/Carrier denied the compensability of Claimant's accident. On the eve of the Final Hearing, the parties entered into a Stipulation Agreement whereby the Employer/Carrier accepted compensability of this claim for benefits and stipulated to Claimant's attorney's entitlement to fees and costs related to the securing of benefits. Claimant's attorney also sought entitlement to additional fees pursuant to F.S. 57.105 and the parties reserved jurisdiction for the JCC to determine his entitlement to such a fee.

The JCC then entered an Order denying Claimant's request for an additional attorney fee under F.S. 57.105 as she concluded such fees are not awardable in workers' compensation proceedings. The JCC also denied Claimant's request for costs as it pertained to his seeking the reimbursement for the expense of videotaping the depositions of two witnesses as the JCC held there was no showing that the witnesses would be unavailable to attend the Final Hearing requiring the videotaping of their depositions and noted there was an intention to utilize the video depositions in a separate civil proceeding. Claimant subsequently appealed the JCC's Order.

Issue: Whether the award of fees under Florida Statutes Section 57.105 is inappropriate in workers' compensation proceedings and whether a party can recover the costs associated with the videotaping of a witness' deposition.

Outcome and Analysis:

F.S. Section 57.105 provides for an award of a reasonable attorney's fee in a civil action where the losing party or the losing party's attorney knew, or should have known, that a claim or defense was not supported by the necessary material facts.

The Court held the JCC properly denied Claimant an award of attorney's fees under F.S. 57.105 as Chapter 440 does not provide the statutory authority for the application of the imposition of the award of fees pursuant to F.S. 57.105. The Appellant's argument that the attorney's fee provisions of F.S. 57.105 are intended to supplement the provisions of Chapter 440 with an additional sanction or remedy was rejected by the Court as Chapter 440 already provides a host of specific sanctions and remedies which includes attorney's fees for frivolous claims and defenses under F.S. 440.32. Furthermore, the Court advised that when the Florida Legislature amended F.S. 57.105 in 2003 to include specifically an award of attorney's fees for baseless claims and defenses raised in administrative proceedings under Chapter 120, no similar amendment was made which would expressly include workers' compensation cases, and under the doctrine "inclusio unius est exclusio alterius", an inference must be drawn that the Legislature did not intend to include workers' compensation trial proceedings within F.S. 57.105.

The Court also reversed the JCC's Order denying Claimant's entitlement to costs related to the videotaping of the witness' depositions and remanded to the JCC to apply the reasonableness standard of the incurrence of this expense pursuant to F.S. 440.34(3). The Court advised the denial of costs is subject to review under an abuse of discretion standard and failure to apply the correct legal standard is grounds for reversal.

The Court held the JCC did not make the relevant findings of whether the elicited testimony was unnecessary or whether the costs of videotaping the depositions were reasonably expended in pursuing workers' compensation benefits. The JCC failed to consider the reasonableness of Claimant's strategy to videotape the witness' depositions and used an improper standard in concluding the costs of videotaping the depositions was not reimbursable without proof that the witnesses would be unavailable to testify live at the Final Hearing. As the JCC's findings also seemed to imply that the costs of videotaping the witness' depositions were not subject to reimbursement because the depositions might later be used in a separate civil lawsuit, the Court advised the fact a deposition may ultimately serve a dual purpose is not enough to preclude the associated expense as a reasonable cost incurred in the pursuit of workers' compensation benefits.

Take Away: A claimant's potential threat of pursuing fees under F.S. 57.105 as a scare tactic and/or means to drive up the purported value of a claim is inapplicable in a workers' compensation proceeding. Furthermore, the incurrence of the costs of videotaping a witness' deposition may be reimbursable if the JCC determines the expense was reasonably incurred in the pursuit/denial of benefits.