

## **First DCA Allows EC To Recover Costs Against Claimant Who Voluntarily Dismisses Petition for Benefits**

On August 4, 2008, the First District Court of Appeal rendered an opinion in the case of Palm Beach County School District v. Ferrer, Case No. 1D07-4524 allowing the Employer/Carrier to recover costs in a proceeding where the claimant voluntarily dismissed the Petition for Benefits.

In the Ferrer case, one day before Final Hearing, the claimant voluntarily dismissed all seven of her Petitions for Benefits. The employer/carrier filed a motion to assess costs against the claimant which the JCC denied finding that the claimant had not filed any Petition for Benefits after she voluntarily dismissed her Petitions. Therefore, the Judge ruled the employer/carrier's motion was premature. The JCC reasoned that there had been no adjudication on the merits of the claimant's positions as claimant was permitted to dismiss her petitions in the time before the final hearing. Further, the Judge found that only after second dismissal would claimant's claim be deemed denied and only then would the employer/carrier be the prevailing party.

The First District Court of Appeal disagreed with the Judge of Compensation Claims. The First DCA indicated that Section 440.34(3), Florida Statutes (2006) provides that "if any party should prevail in any proceedings before a judge of compensation claims or court, there should be taxed against the nonprevailing party the reasonable costs of such proceedings, not to include attorney's fees." It further said that this statutory provision should be given plain meaning. Based on the plain meaning, the prevailing party is entitled to reasonable costs incurred in the proceedings before the JCC. Whether the dismissal was taken with or without prejudice has no bearing on the result.

Finally, the court indicated that the defendant, and in this case the employer/carrier, becomes the prevailing party when a plaintiff, or in this case a claimant, dismisses its actions. Therefore, the appellate court found that the employer/carrier was the prevailing party and is entitled to recover its costs.

This decision will have tremendous impact on any case wherein a claimant voluntarily dismisses a Petition for Benefits. Should a claimant dismiss a Petition for Benefits in anticipation of a final hearing, the employer/carrier should consider immediately filing a motion to assess attorney's fees and costs with the Judge of Compensation Claims.

After a Judge of Compensation Claims enters an order in favor of the employer/carrier awarding costs against the claimant, this may then be taken to the circuit court in the form of a Rule Nisi petition for enforcement. After the Rule Nisi Order is entered in circuit court, it may then be recorded as a final judgment and execution of a levy may ensue.

The employer/carrier should also consider the cost of collection versus the likelihood of collecting against a claimant. While it may not be financially prudent to pursue collection of costs in all cases, a cost judgment against a claimant may allow bargaining leverage when negotiating settlement.

For the complete opinion click:

<http://opinions.1dca.org/written/opinions2008/08-04-08/07-4524.pdf>