

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

**Christopher D'Angelo,
Employee/Claimant,**

OJCC Case No. 15-018285ERA

vs.

Accident date: 3/1/2004

**City of Miami Beach Fire
Department/Corvel Corporation,
Employer/Carrier/Servicing Agent.**

Judge: Edward Almeyda

FINAL COMPENSATION ORDER

This matter came before me, the undersigned Judge of Compensation Claims, for a final hearing held on April 27, 2017. The Claimant was represented by Kristine Callagy, Esquire, and the E/C by Luis Estrada, Esquire.

The adjudicated PFB is dated 10/9/2017.

CLAIMS/DEFENSES:

Claims:

1. Payment of IIB at the correct rate.
2. Penalties, interest, costs and attorney's fees.

Defenses:

1. Penalties and interests not due and owing
2. Attorney's fees and costs not due
3. Claimant paid all impairment benefits prior to the filing of the PFB dated 10/9/17 and he stipulated on 9/15/16 that all of the IIB had been paid. This stipulation is binding.
4. Estoppel due to prior stipulation that all benefits had been paid.
5. E/C objects to any evidence offered to contradict the 1/10/17 stipulation by Claimant that all impairment benefits together with any penalties and interests due had been paid.

DOCUMENTARY EVIDENCE:

Claimant:

1. PFB dated 10/9/17 (34-36)

2. Deposition of SAMANTHA HESTER (62)
3. Deposition of LASHAWN MILLER (63)

1. PFB dated 9/8/2016. (15)
2. Response to PFB dated 9/15/2016 (22)
3. Voluntary dismissal (32)

Judge's exhibits for identification purposes:

1. Pretrial (58)
2. Claimant's memorandum (65)
3. E/C memorandum (59)
4. Motion to clarify (67)
5. Response to motion to clarify (68)
6. Motion for rehearing (71)
7. Response to motion for rehearing (72)

FINDINGS OF FACTS AND CONCLUSION OF LAW

1. This matter involves a small issue, and no live testimony was adduced. The first issue is over the payment of interest and penalties on the first installment of IIB paid. The second involves an adjustment of the rate at which IIB was paid for the weeks ending on 12/26/13, 1/31/14 and 10/30/13, coupled with penalties and interest. The following depositions are in evidence:

2. SAMANTHA HESTER: She is the human resource administrator for the Employer. She produced the payroll records. For the two week period of 10/7/13 to 10/20/13 the Claimant worked 72 hours and took 24 hours vacation. The same for the period of 11/4/13 to 11/17/13. In all the Claimant's regular earnings dropped below the stipulated AWW on the weeks ending on 12/26/13, 1/31/14 and 10/30/13. The Claimant on those weeks was paid the accrued vacation and leave time he had previously earned to make up for the deficiency.

3. LASHAWN MILLER: She is the adjuster in this case. She testified that the AWW is

\$1,164.32 with a compensation rate of \$626.00. The Claimant was at MMI with a 12% rating on 10/4/2013. The adjuster did not know whether the Claimant missed time from work during the IIB period of 26 weeks. She paid the IIB at 50% of the 75% rate, assuming his AWW was the same during this period.

4. The first IIB payment was made on 12/13/13 for the period of 10/5/13 to 12/13/13. The MMI was received on 11/27/13.

CONCLUSION

5. The E/C argues that the Claimant entered into a “stipulation” to the effect that all due benefits were paid. The document purporting to be this “stipulation” is a notice of voluntary dismissal, only executed by the Claimant’s attorney.

6. A stipulation is a document reflecting a bilateral agreement of all parties. It can either be done in open court (thus no document is needed), or by a written document. It requires a mutuality, which does not exist in this voluntary dismissal. Thus, there is no stipulation, as alleged, and this defense is denied.

7. Next, the E/C argues that the Claimant is estopped from claiming benefits after this “stipulation”. This argument requires a misstatement from the Claimant, which exists in this case. It further requires reliance on this statement to the detriment.

8. There is no evidence to support any reliance and certainly none that establishes a detriment to the E/C. Once the current petition was filed, the E/C had by statute time to investigate whether penalties, interests, and an adjustment in the IIB benefits were due. This was not done, and in fact, it has not been done to date. Likewise, if the payment of the small benefits claimed herein, ascertainable by a phone call to the Employer, were made within 30 days, no

fees would have been due. Instead, the E/C chose to do nothing, and take an unsupportable position to deny the small claimed benefits, and litigate to trial and an order. Thus, the second argument fails.

9. Clearly the Claimant's earnings for a three week period dropped below the AWW. The reason for this is not relevant, as stated in *Seminole County v. Baumgardner*, 28 So3d 145 (Fla 1DCA, 2010). The E/C must make a weekly inquiry to properly determine the rate at which the IIB should be paid. (*Box v. Tallahassee Fire Dep't*, 160 So 3d 133 (Fla. 1st DCA, 2015). This they did not do.

10. The earnings for the weeks in question must be actual earnings from work, not pay drawn from vested benefits, such as was done here. (*Eckert v. Pinellas County*, 215 So2d 161 (Fla. 1st DCA, 2017).

11. Here the Claimant's earnings clearly fell below the AWW and he is entitled to the full IIB payment at 75% of the compensation rate, without any further deductions as were taken here.

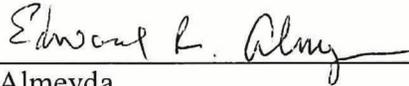
12. The first payment of IIB was made more than 14 days after the E/C had knowledge of the impairment and MMI date. Thus penalties and interest is due on this initial payment of IIB made on 12/13/2013. Penalties and interest are also due on the adjustment on the three week period of IIB paid incorrectly.

13. As the Claimant's attorney prevailed; fees and costs are due, the quantum to be determined at a later date.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. The E/C shall pay penalties and interest on the IIBs paid on 12/13/13.
2. The E/C shall pay at the full IIB rate the IIBs paid for the weeks of 12/26/13, 1/31/14 and 10/30/13, together with penalties and interest.
3. Jurisdiction is reserved to determine the quantum of fees and costs due from the E/C.

DONE AND SERVED this 30th day of April, 2018, in Miami, Dade County, Florida.

S 

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