

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

Jeffrey Stuart,  
Employee/Claimant,

OJCC Case No. 18-015040WWA

vs.

Accident date: 1/1/2018

Flagler County Sheriff's Office/Florida  
Sheriffs Risk Management Fund (FSRMF),  
Employer/Carrier/Servicing Agent.

Judge: Wilbur W. Anderson

**ORDER DENYING MOTION FOR ADVANCE IN EXCESS OF \$2,000**

This case is before the undersigned on Claimant's motion for an advance of \$5,976.19. The Employer/Carrier (E/C) opposes the motion. The parties filed a joint stipulation as to the procedure for ruling on the motion based on the pleadings and other documents submitted. The pleadings and other documents I have considered in determining this motion are identified in the parties' notices of identification of documents appended to this order. The parties waived the opportunity to present live testimony in support of, or in opposition to, the motion.

*Findings of Fact and Conclusions of Law*

1. Claimant is one of a number of employees of the Flagler County Sheriff's Office seeking workers' compensation benefits based on alleged exposure to unknown toxins at the Flagler County Sheriff's Office Operations Center. The E/C has denied all of these claims, and they have not yet been adjudicated. Each claimant is seeking an advance of \$5,976.19 to pay \$476.19 as a pro rata share for testing of the facility by an independent industrial hygienist at an approximate cost of \$10,000, to pay for an independent medical evaluation (IME) at a cost of \$3,500, and to pay for the IME deposition at an estimated cost of \$2,000.

2. Advances in excess of \$2,000 are governed by section 440.20(12)(d), Florida Statutes. This statute explicitly requires three findings before such an advance may be ordered: (1) that the advance payment is for the best interests of the person entitled to compensation; (2) that it will not materially prejudice the rights of the employer and carrier; and (3) that it is reasonable under the circumstances of the case. The statute does not permit an advance in excess of \$2,000 unless all three questions are answered in the affirmative.

3. I conclude an advance in excess of \$2,000 is not permissible in a totally controverted case unless there is first a determination that the individual seeking the advance is entitled to compensation in some amount. Unlike advances of \$2,000 or less under section 440.20(12)(c), advances in excess of \$2,000 under section 440.20(12)(d) require a finding “that such advance payment is for the best interests *of the person entitled to compensation.*” (emphasis added). *Cf. Lopez v. Allied Aerofoam/Specialty Risk Services*, 48 So. 3d 888 (Fla. 1st DCA 2010) (holding JCC had authority to award claimant an advance not in excess of \$2,000, even though the case was contested). Compensation is defined in section 440.02(7), Florida Statutes, as “the money allowance payable to an employee or to his or her dependents as provided for in this chapter.” Section 440.20(12)(d) does not require a finding that the advance is for the best interests of the person *claiming* entitlement to compensation. Instead, it requires a finding that the advance is for the best interests of the person *entitled to compensation.* *Cf. Williams v. State Dept. of Corr./Div. of Risk Mgmt.*, 97 So. 3d 923 (Fla. 1st DCA 2012) (holding that even though the amount advanced under section 440.20(12)(c) is termed “compensation,” it is not a payment of “compensation due” a claimant). Statutes should be given their plain meaning. Without a prior finding or stipulation that Claimant is entitled to compensation in some amount, I find Claimant does not qualify for an advance in excess of \$2,000.

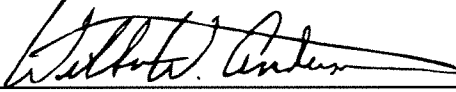
4. Section 440.20(12)(d) also requires a finding that the advance will not materially prejudice the rights of the employer and carrier. In this totally controverted case, where compensability has not yet been determined, I am unable to conclude that an advance of \$5,976.19, or for that matter an advance of any amount in excess of \$2,000, will not materially prejudice the rights of the employer and carrier. The question of material prejudice has been analyzed in terms of whether it is likely the E/C will be repaid. *Murphree Bridge Corp. v. Brown*, 492 So. 2d 451 (Fla. 1st DCA 1986). As the First District Court of Appeal explained, “Implicit throughout the *Murphree* opinion was the court's assumption that if claimant were allowed a future advance from a nonexistent fund, the employer could be materially prejudiced in any later attempt to obtain repayment....” *Workers of Florida v. Williams*, 743 So. 2d 609, 610 (Fla. 1st DCA 1999). No evidence has been presented that Claimant will repay the advance if compensability is not resolved in Claimant’s favor.

5. Finally, an advance under section 440.20(12)(d) requires a finding that the advance is reasonable under the circumstances of the case. Claimant argues that the uniqueness of this claim, requiring the retention of highly qualified and specialized experts, makes the requested advance reasonable. I reject this argument. If Claimant had met the first two statutory requirements for an advance in excess of \$2,000 (that Claimant is entitled to compensation and that there is a fund from which the advance would be repaid), the amount sought may well be reasonable. But without meeting these first two statutory requirements, I am unable to conclude the requested advance is reasonable under the circumstances.

It is therefore,

**ORDERED AND ADJUDGED** that the motion for advance is denied.

**DONE AND ELECTRONICALLY TRANSMITTED VIA EMAIL TO THE ATTORNEYS AND CARRIER LISTED BELOW** this 11<sup>th</sup> day of October, 2018, in Daytona Beach, Volusia County, Florida.



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Wilbur W. Anderson  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
Daytona Beach District Office  
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**COPIES FURNISHED**

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**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS**

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**EMPLOYER**  
**Flagler County Sheriff's Office**  
1001 Justice Lane  
Bunnell, FL 32110

**ATTORNEY FOR E/C/SA**  
**Rex A. Hurley, Esquire**  
Hurley, Rogner, et. al.  
1560 Orange Avenue, Suite 500  
Winter Park, FL 32789  
(407) 571-7400

**SERVICING AGENT**  
**Florida Sheriff's Risk Management Fund**  
2090 Summit Lake Drive  
Tallahassee, FL 32317

**OJCC NO.: 18-015040WWA**  
**Date of Accident: 01/01/18**  
**Judge: Wilbur W. Anderson**

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**EMPLOYEE'S NOTICE OF IDENTIFICATION OF DOCUMENTS  
ON DOCKET SUPPORTING EMPLOYEE'S MOTION FOR ADVANCE**

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The Employee files this Notice of Identification of Documents on Docket Supporting Employee's Motion for Advance as agreed by stipulation of the parties and hereby identifies the following documents for the JCC's consideration in support of the motion for advance in this matter:

DN 1 – Petition for Benefits (compensability, etc.)

DN 6 – Response to Petition for Benefits (compensability, etc.)

DN 11 – Motion for Advance

DN 15 – Notice of Filing Affidavit in Support of Advance by Employee's Counsel

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DN 20 – Notice of Filing Affidavit of Employee in Support of Motion for Advance

DN 21 – Employee’s Reply to E/C’s Response to Claimant’s Motion for Advance

DN 22 – Notice of Filing Curriculum Vitae of Employee’s Proposed Expert

DN 23 – Notice of Filing Sheriff’s Hearsay Statements in Support of Motion for Advance to Fund Testing, IMEs and Deposition Testimony

DN 27 – Notice of Filing: Sheriff’s Additional Hearsay Statements and Investigative Report in Support of Denial of Motion for Summary Final Order and in Support of Employee’s Motion For Advance

DN 28 – Petition for Benefits (advance at issue)

DN 30 – Response to Petition for Benefits (advance at issue)

DN 41 – Joint Stipulation as to Procedure for Claimant’s Motion for Advance

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 2, 2018, I electronically served the foregoing to Rex A. Hurley, Esquire, to [rhurley@hrmcw.com](mailto:rhurley@hrmcw.com) and [sperez@hrmcw.com](mailto:sperez@hrmcw.com).



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Jeffrey E. Appel, Esquire  
Florida Bar No. 0994030  
Co-Counsel for Employee

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
Daytona Beach District**

**EMPLOYEE:**

Jeffrey Stuart

**ATTORNEY FOR EMPLOYEE:**

Geoffrey Bichler, Esquire  
Bichler, Oliver, Longo & Fox, PLLC  
541 S. Orlando Avenue, Suite 310  
Maitland, FL 32751

**CO-COUNSEL FOR EMPLOYEE:**

Jeffrey Appel, Esquire  
625 Commerce Drive, Suite 101  
Lakeland, FL 33813-2733

**EMPLOYER:**

Flagler County Sheriff's Office  
1001 Justice Lane  
Bunnell, FL 32110

**ATTORNEY FOR**

**EMPLOYER/CARRIER:**

Rex A. Hurley, Esquire  
Hurley, Rogner, Miller, Cox and Waranch, P.A.  
1560 Orange Avenue, Suite 500  
Winter Park, FL 32789

**CARRIER:**

Florida Sheriff's Risk Management Fund  
2090 Summit Lake Drive  
Tallahassee, FL 32317

**OJCC CASE NO.:** 18-015040WWA

**D/A:** 1/1/2018

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**E/C'S NOTICE OF IDENTIFICATION OF DOCUMENTS ON DOCKET SUPPORTING  
THE E/C'S RESPONSE TO EMPLOYEE'S MOTION FOR ADVANCE**

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The E/C files this Notice of Identification of Documents on Docket Supporting the E/C's Response to the Employee's Motion for Advance as agreed by stipulation of the parties and hereby identifies the following documents for the JCC's consideration in support of the E/C's Response to the Employee's Motion for Advance in this matter:

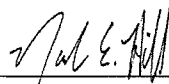
DN 18 - Employer/Carrier's Response to Claimant's Motion for Advance

DN 39 - Employer/Carrier's Notice of Filing Documents for Consideration Relative to Claimant's Motion for Advance

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 3<sup>rd</sup>, 2018, I electronically served the foregoing to

Jeffrey E. Appel, Esquire at [jappel@appellawgroup.com](mailto:jappel@appellawgroup.com) and [mgray@appellawgroup.com](mailto:mgray@appellawgroup.com) and to  
Geoffrey Bichler, Esquire at [geoff@bichlerlaw.com](mailto:geoff@bichlerlaw.com) and [janel@bicherlaw.com](mailto:janel@bicherlaw.com).



---

Rex A. Hurley, Esq./Mark E. Hill, Esq.  
Florida Bar No.: 0435510/0077054  
Hurley, Rogner, Miller, Cox & Waranch, P.A.  
Attorney for the Employer/Carrier



**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
Daytona Beach District**

**EMPLOYEE:**

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101 Breeze Hill Lane  
Palm Coast, FL 32137

**ATTORNEY FOR EMPLOYEE:**

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**CARRIER:**

Florida Sheriff's Risk Management Fund  
2090 Summit Lake Drive  
Tallahassee, FL 32317

**OJCC CASE NO.:** 18-015040WWA

**D/A:** 1/1/2018

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**EMPLOYER/CARRIER'S NOTICE OF FILING DOCUMENTS FOR  
CONSIDERATION RELATIVE TO CLAIMANT'S MOTION FOR ADVANCE**

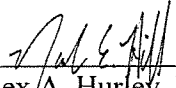
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**COMES NOW** the Employer/Carrier, by and through its undersigned attorneys, and hereby gives notice that the following deposition transcripts are being filed:

1. Affidavit of Mike Smith, E/C's Industrial Hygienist
2. Affidavit of Dr. James D. McCluskey, MD, MPH, PHD, FACOEM
3. Affidavit of Nancy Durrett, handling adjuster
4. CV of Dr. James D. McCluskey
5. CV of Dr. Stuart M. Brooks
6. CV of Dr. Josef G. Thundiyil, MD, MPH, FAAEM, FACEP, FACMT
7. CV of Dr. Stanley C. Haines, MD, MPH, CIH, CSP, FACOEM

8. Summary of IME charges of Dr. McCluskey, Dr. Brooks, Dr. Thundiyl, Dr. Haimes

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 26<sup>th</sup> day of September 2018, to the attorneys for the claimant, Geoffrey Bichler, Esquire at: Geoff@bichlerlaw.com and janel@bichlerlaw.com and Jeffrey Appel, Esquire at jappel@appellawgroup.com and mgray@appellawgroup.com.

  
\_\_\_\_\_  
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Mark E. Hill, Esquire  
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Attorney for Employer/Carrier