

The Law Offices of Bolton & Helm, LLP

CASE LAW UPDATE

Unsuccessful Fraud Defense Results In Attorney's Fees

In Carrillo v. Claims Case Engineering, Inc., 36 Fla. L. Weekly D339d (Fla. 1st DCA, February 11, 2011), the appellate court awarded attorney's fees to the claimant when the JCC denied all benefits sought but claimant prevailed on defeating E/C's fraud defense. The 1st DCA held that in defeating the affirmative defense contemplated by sections 440.09 and 440.105, the claimant prevailed on an issue of compensability. The Court said that in asserting entitlement to attorney's fees on the basis of section 440.34(3)(c)(compensability denied), claimant adequately preserved for appeal the JCC's denial of the attorney's fees sought for successfully defending against the fraud defense predicated on sections 440.09 and 440.105. The Court went on to equate the fraud defense to a denial of compensability. If the opposing parties had been successful in convincing the JCC that Mr. Carrillo's testimony did rise to the level of fraud, his entitlement to ongoing palliative medical treatment at the employer's expense would have been extinguished.

Discussion: Care must be taken in asserting a fraud defense. Even if the defenses are successful on all other issues, a fee may be due in the presence of an unsuccessful fraud defense. The same result may not occur if a fraud defense is taken in a totally controverted claim in which the JCC denies benefits on the defense of the underlying claim and simultaneously rejects a fraud defense.

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