

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

BENICIA DEMEDRANO,

Appellant,

v.

CASE NO. 1D06-6122

LABOR FINDERS OF THE
TREASURE COAST and
AMISURE INSURANCE
COMPANY,

Appellees.

Opinion filed January 12, 2009.

An appeal from an order of the Judge of Compensation Claims.
Robert D. McAiley, Judge.

Date of Accident: March 21, 2005.

Kip A. Davis and Jeffrey Friedman of Vassallo & Bilotta, P.A., Palm Springs, and
Bill McCabe, Longwood, for Appellant.

No appearance for Appellees.

PER CURIAM.

Claimant challenges the Judge of Compensation Claims' (JCC) order denying reimbursement for paralegal costs. Claimant argues the JCC erred by finding he had jurisdiction to review costs to be reimbursed to Claimant's attorney

from settlement proceeds, and by finding that paralegal time is not a reimbursable cost, but is instead included within attorney time. We affirm.

A JCC lacks inherent judicial power, such as that given a court of general jurisdiction. See Pace v. Miami-Dade County Sch. Bd., 868 So. 2d 1286, 1287 (Fla. 1st DCA 2004). The JCC only has the power expressly set out in Chapter 440, Florida Statutes. Id. Section 440.33(1), Florida Statutes, directs that the JCC may “do all things conformable to law which may be necessary to enable the judge effectively to discharge the duties of his or her office.”

A JCC is required to approve any attorney’s fee paid as a result of a settlement agreement. See § 440.20(11)(c), Fla. Stat. (2004); Eshlibi v. Consol. Box Mfg., 962 So. 2d 377 (Fla. 1st DCA 2007); Rodriguez v. Graduate Plastics, Inc., 954 So. 2d 629, 630 (Fla. 1st DCA 2007). The attorney’s fee is limited to a percentage of the benefits secured. See § 440.34(1), Fla. Stat. (2003).¹ A JCC “shall not approve . . . a joint stipulation for lump sum settlement . . . that provides

¹ The Supreme Court’s recent opinion in Murray v. Mariner Health, 33 Fla. L. Weekly S845 (Fla. Oct. 23, 2008), is not applicable here. Murray determined that when a claimant is entitled to recover attorney fees from an *employer/carrier* “as provided by section 440.34(3)(a), (b), (c), or (d), the claimant is entitled to recover ‘a reasonable attorney’s fee,’” and that *employer/carrier* paid fee is not limited by the formula set out in section 440.34(1), Florida Statutes. Here, *Claimant* is paying a fee to his attorney pursuant to a lump sum settlement, a situation which is governed by section 440.34(1), Florida Statutes.

for an attorney's fee in excess of the amount permitted by this section." Id. Because the JCC is authorized to do whatever is necessary to insure that a fee in excess of the fee schedule is not approved, the JCC had jurisdiction to review the costs to determine whether the costs included any element that should have been included in the attorney's fee.

Analysis of Claimant's second argument, that paralegal time is a reimbursable cost, begins with a review of section 57.104, Florida Statutes, which reads in part:

In any action in which attorneys' fees are to be determined or awarded by the court, the court shall consider, among other things, time and labor of any legal assistants who contributed nonclerical, meaningful legal support

This section applies to workers' compensation matters. See Dayco Prod. v. McLane, 690 So. 2d 654, 656 (Fla. 1st DCA 1997). Application of section 57.104, Florida Statutes, is mandatory when attorney's fees are awarded. See Loper v. Allstate Ins. Co., 616 So. 2d 1055, 1061 (Fla. 1st DCA 1993) (holding the trial court "disregarded the mandatory language in section 57.104" when it failed to consider the paralegal's time as reflected in the affidavit filed by Loper's attorney).

Claimant's argument that the question of costs is controlled by the retainer agreement, citing as authority the rules regulating the Florida Bar, is without merit. Rules "cannot alter, amend or eliminate" a substantive right. See Heymann v.

Free, 913 So. 2d 11, 12 (Fla. 1st DCA 2005).

Here, the JCC reviewed sections 57.104 and 440.34(1), Florida Statutes, Loper, and Dayco Prod., and concluded paralegal time was required to be included with attorney time. The change in section 440.34(1), Florida Statutes (2003), as it relates to attorney's fees to be paid pursuant to a joint stipulation for lump sum settlement, altered the basis for determining the fee amount, requiring all fees be based solely upon benefits secured. Because paralegal time falls within the ambit of attorney time, the attorney fee, based on the fee schedule now mandated by the statute, compensates for paralegal time within an award for attorney time. The JCC correctly concluded the charges for paralegal time were compensated within the statutory fee schedule, and were not recoverable from Claimant as a cost.

AFFIRMED.

KAHN, BENTON, and BROWNING, JJ., CONCUR.