

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DANIEL PAULA AND DRAUSIA PAULA,
on behalf of and as parents and
natural guardians of LUCAS
PAULA, a minor,

Petitioners,

vs.

Case No. 17-2711N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent.

_____ /

SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon a Notice of Voluntary Dismissal Without Prejudice filed by Petitioners on April 10, 2018.

STATEMENT OF THE CASE

On May 12, 2017, Petitioners filed a Petition for Benefits Pursuant to Florida Statute Section 766.301 et seq., otherwise known as the Florida Birth-Related Neurological Injury Compensation Plan (the Plan).

On January 3, 2018, Respondent filed a Notice of Non-Compensability and Request for Evidentiary Hearing on Compensability, asserting that Lucas Paula did not suffer an injury that is compensable under the Plan.

By Notice dated March 22, 2018, this matter was set for final hearing on October 24, 2018.

On April 2, 2018, Petitioners filed a Motion to Withdraw Hearing on the Issue of Compensability. In addition to the request that the scheduled hearing be cancelled, the motion included the statement that "[U]nder the principle of judicial economy, Petitioners understand that once compensability is established, the items of expense to be awarded can often be determined by agreement of the parties without the necessity of an evidentiary hearing." This statement was confusing to both the undersigned and to Respondent. On April 2, 2018, Respondent filed a Response to Petitioners' Motion to Withdraw Hearing on the Issue of Compensability, stating, inter alia:

1. The Respondent is confused by the Petitioners' Motion to Withdraw Hearing on the Issue of Compensability, and requests that the Petitioners either clarify their position, or the ALJ conduct a telephonic hearing to determine the intent of the Petitioners.

2. Specifically, NICA has asserted that the Claim is not Compensable. The Petitioners have previously contested this determination. If the Petitioners are intending to withdraw or dismiss their Petition, it is their right to do so. If the Petitioners do not dispute NICA's Motion for Summary Final Order determining that the Claim is not Compensable, then the Petitioners can so assert that position.

However, if the Petitioners do want the Claim to be determined to be Compensable,

then there must be a hearing on the issue of Compensability.

As suggested by Respondent, a telephonic pre-hearing conference was held on April 9, 2018, in order to clarify the relief that Petitioners were seeking. During that pre-hearing conference, Petitioner, Daniel Paula, unequivocally stated that it was Petitioners' intent to withdraw their Petition for Benefits and to abandon all claims against Respondent. The undersigned stated to Mr. Paula that, given the ambiguous nature of the Motion to Withdraw Hearing on the Issue of Compensability, it would be necessary for Petitioners to file a Notice of Voluntary Dismissal in order for the file of the Division of Administrative Hearings to be closed.

On April 10, 2018, Petitioners filed a Notice of Voluntary Dismissal Without Prejudice, stating that Petitioners "hereby file this notice of voluntary dismissal of the above-styled cause without prejudice as to Defendant, Florida Birth-Related Neurological Injury Compensation Association."

CONCLUSION

Based on the foregoing, it is ORDERED that the Petition filed by Petitioners, Daniel Paula and Drausia Paula, on behalf of and as parent and natural guardians of Lucas Paula, is dismissed with prejudice.

DONE AND ORDERED this 13th day of April, 2018, in
Tallahassee, Leon County, Florida.



W. DAVID WATKINS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of April, 2018.

COPIES FURNISHED:
(via certified mail)

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Review of a final order of an administrative law judge shall be by appeal to the District Court of Appeal pursuant to section 766.311(1), Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy, accompanied by filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal. See § 766.311(1), Fla. Stat., and Fla. Birth-Related Neurological Injury Comp. Ass'n v. Carreras, 598 So. 2d 299 (Fla. 1st DCA 1992).