

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

RHONDA L. SMYTH,

Appellant,

v.

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

CASE NO. 1D04-1362

K-MART CORPORATION, and
CAMBRIDGE INTEGRATED
SERVICES,

Appellees.

Opinion filed May 19, 2005.

An appeal from the Judge of Compensation Claims.
Judge Diane B. Beck.

Keith A. Mann, of Mann Legal Group, Sarasota, for Appellant.

Cindy R. Galen, of Eraclides, Johns, Hall, Gelman, Eikner & Johannessen, L.L.P., Sarasota,
for Appellees.

BARFIELD, J.

With the exception of the finding regarding the fee rate customarily charged in the
locality for similar services, competent substantial evidence supports the factual findings in

the appealed order awarding attorney fees to the claimant's counsel. In response to the verified petition and affidavit in which the claimant's counsel stated that the customary fee rate was \$250 per hour for similar services, the employer/carrier presented no evidence, only an unsworn memorandum and counsel's argument at the hearing. All other issues raised in this appeal are without merit. The order is REMANDED for a recalculation of the attorney fee, using the fee rate of \$250 per hour, but in all other respects, the order is AFFIRMED. LEWIS, J., concurs. WOLF, C.J., concurs with written opinion.

WOLF, C.J., Concurring.

Absent the holdings in Morris v. Dollar Tree Store, 869 So. 2d 704 (Fla. 1st DCA 2004), and Sanchez v. Woerner Management, Inc., 867 So. 2d 1173 (Fla. 1st DCA 2004), I would affirm the entire order of the Judge of Compensation Claims (JCC). The JCC has sufficient expertise to determine the reasonable hourly rate to be awarded to the attorney. In light of these previous holdings, however, I am constrained to concur in the decision of the majority.