

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D16-4767

PETER PORTU,

Appellant,

v.

CITY OF CORAL GABLES, JOHNS
EASTERN COMPANY, INC., and
CORVEL CORPORATION,

Appellees.

On appeal from the Office of the Judges of Compensation Claims.
Margret G. Kerr, Judge.

Date of Accident: November 18, 2009.

April 18, 2018

PER CURIAM.

Peter Portu appeals the workers' compensation order denying attorney's fees and costs. We reverse as to attorney's fees. We affirm as to costs because Portu did not preserve his claim for appeal.

Section 440.34(3), Florida Statutes (2009), entitles a claimant to attorney's fees when the "carrier files a response to petition denying benefits"; the claimant has a "successful prosecution of the petition"; and thirty days elapse from "the date the carrier . . . receives the petition." *Franco v. SCI at Palmer*

Club at Prestancia, 989 So. 2d 709, 710 (Fla. 1st DCA 2008) (quoting statute). Each of those factors is present here. The fact that the petition sought a higher impairment rating than the employer eventually agreed to does not change the statutory factors. On remand, the judge of compensation claims must award fees.

AFFIRMED in part; REVERSED in part.

KELSEY, WINOKUR, and WINSOR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Kimberly A. Hill of Kimberly A. Hill, P.L., Fort Lauderdale, for Appellant.

Luis F. Estrada of Angones, McClure & Garcia, P.A., Miami, for Appellees.