

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F106054

KEVIN W. WARGO, EMPLOYEE	CLAIMANT
DeQUEEN SAND & GRAVEL COMPANY, EMPLOYER	RESPONDENT
BITUMINOUS CASUALTY CORPORATION, CARRIER	RESPONDENT

ORDER FILED AUGUST 26, 2004

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE CHARLES R. PADGHAM, Attorney at Law, Hot Springs, Arkansas.

Respondent represented by HONORABLE RANDY MURPHY, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter is currently before the Full Workers' Compensation Commission on remand from the Arkansas Court of Appeals. In an opinion delivered June 20, 2004, the Court of Appeals reversed and remanded this matter to the Full Commission to award an attorney's fee. Attorney Keith Wren appealed the decision of the Full Workers' Compensation Commission denying his claim of an attorney's lien. The Commission had affirmed and adopted the decision of the Administrative Law Judge finding that the Wren Law Firm had failed to prove the matter was controverted at any time during their representation. Attorney Wren filed an appeal from the Full Commission's opinion contending that the Commission's ruling was in error. The Commission based its

finding upon Ark. Code Ann. § 11-9-715(a)(1)(B)(ii) that provides that fees are only allowed on the amount of compensation for indemnity benefits that are controverted and awarded. The Court of Appeals found that the Commission's reliance upon this provision to defeat the lien was "untenable." The Court of Appeals went on to state:

In Seward v. The Bud Avants Co., 65 Ark. App. 88, 985 S.W.2d 332 (199), we observed that fees in workers' compensation cases are not capable of determination until benefits are no longer being paid. Here, appellant [Attorney Wren] was discharged before the litigation has run its course. Mr. Wargo [claimant] had not reached the end of his healing period; he was being paid all appropriate benefits; and, the question of his entitlement to permanent disability benefits, and how much, was not yet ripe for determination. Ultimately, the Commission concluded that a fee was warranted as shown by its approval of the fee in the joint-petition order. With these considerations in mind, and given the legislature's clear expression of its intent with regard to the attorney's-lien law, we are not persuaded that the initial lack of controversion forecloses the assertion of a lien.

The Court of Appeals remanded the case to the Commission for an award of attorney's fees.

The salient fact of this case are not in dispute. On May 23, 2001, the claimant sustained an injury while

working for the respondent employer. The claim was accepted as compensable and the claimant was paid benefits until he reached the end of his healing period on August 5, 2002. On February 9, 2002, before his healing period had ended, the claimant engaged the service of Attorney Wren to handle his claim for permanent disability benefits. The claimant and Mr. Wren entered into a written fee agreement setting out the fee.

On May 2, 2002, the claimant phoned Attorney Wren's office to say that he was to have a CT scan and that he would call when he got released from the doctor. On May 15, 2002, the claimant again phoned Attorney Wren's office stating that he was to undergo a functional capacity evaluation and again he would call when he was released. On July 30, 2002, the claimant contacted Attorney Wren's office stating that he was moving and that he wanted to withdraw his claim because he didn't want to "fool with it." It was at that time that Attorney Wren contacted and spoke with the claimant. At all other times the claimant had not spoken directly with Attorney Wren. The claimant received a letter confirming the conversation with Mr. Wren and that he wanted to close his file.

On July 29, 2002, the claimant hired Attorney Charles Padgham to represent him in the matter and Mr. Padgham filed an AR-C form with the Commission. On August 26, 2002, Attorney Wren notified Attorney Padgham that he no longer represented the claimant but that he intended to retain a lien pursuant to the fee agreement he had with the claimant. On January 31, 2003, the claimant's claim for permanent benefits was settled by joint petition. The joint petition provided that the claimant was to receive a lump sum payment of \$10,250.00, and that an attorney's fee would be awarded to Mr. Padgham in the amount of \$1,425.00. Attorney Wren asserted his attorney lien but the lien was denied.

In its opinion the Court of Appeals clearly indicated that before the amount on the attorney's fee can be determined and awarded, a finding must be made as to whether the attorney was discharged or dismissed with or without cause. If the attorney is dismissed without cause, the compensation is based upon the fee agreement between the claimant and the attorney. However, if the dismissal or discharge is with cause, the attorney still retains a lien, "but the amount of compensation is determined on a quantum-metuit basis." After reviewing the record de novo, we find

that the totality of the circumstances supports a finding that the claimant dismissed Attorney Wren for cause. The claimant retained new counsel prior to dismissing Wren. Accordingly, we find that claimant's statement to Wren that he was moving and that he did not want to fool with his claim is clearly false. By retaining new counsel prior to the dismissal of Attorney Wren the claimant had every intention of continuing to pursue his workers' compensation claim. The claimant testified that he fired Attorney Wren for cause because he did not receive the appropriate help and assistance he desired on his claim. Although the claimant did not express his displeasure with Attorney Wren over his representation, and, in fact, misled Wren as to the reason for dismissing him, we do not find the claimant's politeness to be detrimental to our finding that Wren was, in fact, dismissed for cause.

After our review of this record, we find that Attorney Wren is entitled to a fee of \$150.00. Pursuant to quantum-meruit, an attorney is entitled to receive compensation for the services provided to the claimant. The facts in evidence in this case indicate that Attorney Wren did not provide much in the way of services to the claimant. Quantum-meruit means "as much as he deserves" and it is an

expression that describes the extent of liability on a contract that is implied by law. *Black's Law Dictionary, 5th Edition*. The claimant attempted to contact Attorney Wren several times but was only able to leave him messages. He only spoke to Attorney Wren when he finally terminated his services. Although the claimant was untruthful with Attorney Wren, its obvious that the claimant was not pleased with Attorney Wren's services. It is also noted that Attorney Wren acknowledged that he provided only minimal services to the claimant.

Accordingly, after we consider this case on remand from the Court of Appeals, we find that Attorney Wren is entitled to \$150.00 in attorney's fees.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. McKINNEY, Commissioner