

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211445

LENDEL THOMAS (DEC'D),
EMPLOYEE

CLAIMANT

HARRISON PUBLIC SCHOOLS,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS
ASSOCIATION WC TRUST,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 27, 2006

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

Claimant represented by the HONORABLE JAY TOLLEY and the
HONORABLE EVELYN BROOKS, Attorneys at Law, Fayetteville,
Arkansas.

Respondents represented by the HONORABLE BETTY DEMORY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed August 17, 2005. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. Respondent has paid one-half of the lump
sum attorney fees ordered by Judge White.
2. Specifically, respondent on October 28,
2004 paid \$14,815.35 and previously paid some
smaller checks equaling in total the one-half
lump sum due by respondent for their one-half
share (\$15,109.34) of the lump sum attorney's

fee awarded in ALJ White's September 14, 2004 Order.

3. The parties can stipulate to the findings of fact and conclusions of law from the two prior Opinions in this case.

4. ALJ C. Michael White's September 14, 2004 Order directed the claimant and the respondents to each pay a \$15,109.34 attorney's fee to the claimant's attorney. ALJ White's order did not direct the respondents to pay both halves of the fee and then recoup the claimant's one-half fee from future installments. ALJ White's award of a \$15,109.34 lump sum attorney's fee payable by the claimant is inconsistent with the attorney-client fee agreement in Mr. Tolley's June 16, 2004 letter to ALJ White where Mr. Tolley indicated that he was not requesting the claimant's one-half fee be paid in lump sum.

5. In light of the statutory interpretation of the Arkansas Court of Appeals in Seward v. The Bud Advants Co., 65 Ark. App. 88, 985 S.W.2d 332 (1999), I find that I am without statutory authority to direct the respondents to pay the claimant's \$15,109.34 portion of the lump sum attorney's fee ordered by ALJ White on September 14, 2004.

6. I find that ALJ White's September 14, 2004 Order is not res judicata regarding his finding that the (deceased) claimant pay a \$15,109.34 lump sum attorney's fee to the claimant's attorney.

7. Instead, I find that the claimant's attorney is entitled to receive a 12.5% attorney's fee on all installments of indemnity benefits payable in this claim, consistent with Seward, supra.

8. Neither the respondents or the claimant owe the claimant's attorney a 20% penalty for late payment of attorney's fees in this case.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore we affirm and adopt the August 17, 2005 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner