

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F109650 & F412000

RANDY E. LEWIS, EMPLOYEE	CLAIMANT
AUTO PARTS & TIRE, EMPLOYER	RESPONDENT NO. 1
ZENITH INSURANCE CO., CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

ORDER FILED JUNE 3, 2009

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

Claimant represented by HONORABLE STEPHEN SHARUM, Attorney at Law, Fort Smith, Arkansas.

Respondent No. 1 represented by HONORABLE MATTHEW MAULDIN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID SIMMONS, Attorney at Law, Little Rock, Arkansas.

ORDER

This case is presently before the Full Workers' Compensation Commission on remand from the Arkansas Court of Appeals. In an opinion delivered December 31, 2008, the Court reversed and remanded a decision by the Commission dated April 1, 2008. The Court reversed the Commission's finding that Ark. Code Ann. §11-9-716 did not authorize the Commission to award a lump sum attorney fee to be paid by the Second Injury Fund. The Court specifically stated:

...[T]he Commission's opinion is based on the false conclusion that the amount of the attorney's fee is "unascertainable" since the amount of

payments to the claimant are unascertainable. We agree. The Commission mistakenly determined the following: that because the claimant's benefits were to be paid in installments throughout his lifetime, the amount of claimant's benefits were unascertainable; as a result, the amount of claimant's attorney fee was also unascertainable. Relying on the language in Seward, the Commission concluded that because the amount of fees was unascertainable, then the Commission could not award a lump-sum attorney fee. That is not the holding in Seward. In Seward, this court held that it was the intention of the legislature to enable the Workers' Compensation Commission to approve the lump-sum payment of attorney's fees chargeable to the employer while providing for installment payments of the portion of the attorney's fees chargeable to the injured employee or the injured employee's dependents; in such a situation the portion of the fee to be paid in installments by the injured employee or the injured employee's dependents should not be discounted since it is not being received by the attorney in a lump sum. Seward, 65 Ark. App. at 95, 985 S.W.2d at 335. The Commission's misinterpretation of Seward was a mistake of law.

The Court then remanded this case to the Commission to award a lump sum attorney fee to be paid to the claimant's attorney by the Second Injury Fund.

Pursuant to the remand from the Court of Appeals,

LEWIS
F109650/F412000

-3-

the Full Commission awards the claimant's attorney, pursuant to Ark. Code Ann. §11-9-716, a lump sum attorney fee for legal services owed to him by the Second Injury Fund.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. McKINNEY, Commissioner

PHILIP A. HOOD, Commissioner