

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404152

KARA WYATT OTIS (WIDOW), STEPHEN J. WYATT (DECEASED), EMPLOYEE	CLAIMANT
FIRST ELECTRIC CO-OP CORPORATION, EMPLOYER	RESPONDENT NO. 1
REGIONS CLAIMS MANAGEMENT (TPA), INSURANCE CARRIER	RESPONDENT NO. 1
DEATH AND PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JULY 5, 2011

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

Respondent No. 1 represented by the HONORABLE BETTY J.
HARDY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID L. PAKE,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed in part,
affirmed in part.

OPINION AND ORDER

Respondent No. 2, Death and Permanent Total Disability
Trust Fund, appeals an administrative law judge's amended
opinion filed April 14, 2011. The administrative law judge
directed Respondent No. 2 to reimburse Respondent No. 1 for
Respondent No. 1's lump-sum payment to the claimant. After

reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. We find that Respondent No. 1 is not entitled to such a reimbursement from Respondent No. 2.

I. HISTORY

The parties stipulated that Stephen J. Wyatt sustained fatal compensable injuries on April 13, 2004. Respondent No. 1, First Electric Cooperative Corporation, paid a total of \$75,000 in benefits to Stephen's widow, Kara Wyatt. Respondent No. 2, Death and Permanent Total Disability Trust Fund, began paying benefits to Kara Wyatt on September 24, 2007. Kara Wyatt remarried on May 22, 2010, at which time Respondent No. 2 ceased payment of benefits to her. Respondent No. 1 paid Kara Wyatt Otis \$30,357.60 in a lump sum for Ms. Otis's remarriage benefits in accordance with Ark. Code Ann. §11-9-527(d) (Repl. 2002).

A pre-hearing order was filed on November 10, 2010. Respondent No. 1, First Electric, contended that the Death and Permanent Total Disability Trust Fund was liable for any benefits over the employer/carrier's cap of \$75,000 in accordance with Ark. Code Ann. §11-9-502(2) (Repl. 2002) and *Death & Permanent v. Legacy*, 95 Ark. App. 189, 235 S.W.3d

544 (2006). Respondent No. 2, the Trust Fund, contended that the employer/carrier was liable for Ms. Otis' remarriage benefits pursuant to *City of Ft. Smith v. Tate*, 38 Ark. App. 172, 832 S.W.2d 262 (1992). The parties agreed to litigate the following issues: "Whether the employer/carrier or the Trust Fund is liable for the 104 weeks of benefits pursuant to Ark. Code Ann. §11-9-502(2), Ark. Code Ann. §11-9-527(d), and Ark. Code Ann. §§11-9-501-506."

An administrative law judge filed an amended opinion on April 14, 2011. The administrative law judge found, in pertinent part, "Respondent No. 1 paid benefits up to their statutory maximum. The Fund assumed payments before the widow remarried. The Fund declined to pay the widow's lump sum award. Respondent No. 1 paid the lump sum of \$30,357.60 to the widow, but now seeks reimbursement from respondent No. 2, the Fund....the Fund is directed to reimburse respondent No. 1, Regions Claims Management, \$30,357.60."

Respondent No. 2 appeals to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-502(b) (Repl. 2002) provides:

(1) For injuries occurring on and after March 1, 1981, the first seventy-five thousand dollars

(\$75,000) of weekly benefits for death or permanent total disability shall be paid by the employer or its insurance carrier in the manner provided in this chapter.

(2) An employee or dependent of an employee who receives a total of seventy-five thousand dollars (\$75,000) in weekly benefits shall be eligible to continue to draw benefits at the rates prescribed in this chapter, but all benefits in excess of seventy-five thousand dollars (\$75,000) shall be payable from the Death and Permanent Total Disability Trust Fund.

As we have noted in the present matter, the parties stipulated that Stephen J. Wyatt sustained fatal compensable injuries on April 13, 2004. Respondent No. 1 subsequently paid a total of \$75,000 in benefits to Stephen's widow, Kara Wyatt. Respondent No. 2, the Fund, began paying benefits to Kara Wyatt on September 24, 2007. Respondent No. 2 ceased payment of benefits to Kara Wyatt after Ms. Wyatt remarried on May 22, 2010. Respondent No. 1 then paid Kara Wyatt Otis \$30,357.60 in a lump sum for Ms. Otis' remarriage benefits pursuant to Ark. Code Ann. §11-9-527(d) (Repl. 2002).

Ark. Code Ann. §11-9-527(d) (Repl. 2002) provides:

(1) In the event the widow remarries before full and complete payment to her of the benefits provided in subsection (c) of this section, there shall be paid to her a lump sum equal to compensation for one hundred four (104) weeks, subject to the limitation set out in §§ 11-9-501 - 11-9-506.

In the present matter, Respondent No. 1 argues that once it paid weekly benefits totaling \$75,000, the Death & Total Disability Trust Fund was liable for all additional benefits, including the \$30,357.60 in benefits paid to Kara Wyatt Otis in accordance with Ark. Code Ann. §11-9-527(d) (Repl. 2002). Nevertheless, the limit on an employer or its carrier's liability under Ark. Code Ann. §11-9-502 applies only to weekly benefits. See *City of Ft. Smith v. Tate*, 311 Ark. 405, 844 S.W.2d 356 (1993). The employer or its carrier is still responsible for any benefits in addition to weekly compensation to which the claimant is entitled, and it is not inconsistent with the limitations found in Ark. Code Ann. §11-9-502 to require the employer or its carrier to pay the lump-sum benefit. *Id.*

Therefore, based on our *de novo* review of the entire record, the Full Commission reverses the administrative law judge's finding that the Fund shall reimburse Respondent No. 1 the lump-sum payment of \$30,357.60. The Full Commission finds that the lump-sum payment shall be the sole responsibility of Respondent No. 1. The record does not demonstrate that Respondent No. 1 has acted frivolously or in bad faith. Nor does the record demonstrate that

Respondent No. 1 instituted or continued the instant proceedings without reasonable grounds. Therefore, we affirm the administrative law judge's finding that Respondent No. 2 is not entitled to any costs or attorney's fees pursuant to Ark. Code Ann. §11-9-714 (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner