

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA11-782

ARKANSAS ELECTRIC CO-OP
CORP. and REGIONS CLAIMS
MANAGEMENT

APPELLANTS

V.

DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND

APPELLEE

Opinion Delivered January 4, 2012

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F404152]

AFFIRMED

ROBIN F. WYNNE, Judge

Appellants Arkansas Electric Co-op Corp. and Regions Claims Management appeal from the Arkansas Workers' Compensation Commission's decision finding appellants liable for payment of a widow's lump-sum remarriage benefit even after their statutory cap on weekly benefits had been reached. We affirm.

Stephen Wyatt sustained fatal compensable injuries on April 13, 2004, while working for appellant Arkansas Electric Co-op Corp. Appellants paid weekly survivor benefits to Mr. Wyatt's widow, Kara Wyatt, until reaching their \$75,000-statutory cap, at which point appellee, the Death & Permanent Total Disability Trust Fund (the Fund), took over the weekly payments. Mrs. Wyatt remarried on May 22, 2010, and the Fund ceased paying her weekly benefits. The Fund notified appellants of Mrs. Wyatt's remarriage and indicated its position that appellants were liable for payment of Mrs. Wyatt's lump-sum remarriage benefit.



Although appellants contended that the Fund was responsible for paying this benefit, they paid the lump sum to Mrs. Wyatt in a good-faith effort to prevent disruption of her benefits. They then took the matter before the Arkansas Workers' Compensation Commission seeking reimbursement from the Fund.

The matter was submitted to an administrative law judge (ALJ) on the record to determine which party was liable for the lump-sum payment. The parties stipulated to the above facts, and the ALJ issued an opinion ordering the Fund to reimburse appellants for the lump-sum remarriage benefit paid to Mrs. Wyatt. The Fund appealed to the Commission. In a unanimous decision, the Commission reversed the ALJ's opinion and found that appellants were liable for the lump-sum remarriage benefit, despite the fact that they had reached their statutory cap on payment of weekly benefits. The Commission based its decision on the supreme court's reasoning in *City of Fort Smith v. Tate (Tate II)*, 311 Ark. 405, 844 S.W.2d 356 (1993). Appellants now bring the issue to this court and ask us to interpret the applicable statutes in their favor.

We review issues of statutory construction de novo. *Johnson v. Bonds Fertilizer, Inc.*, 365 Ark. 133, 135, 226 S.W.3d 753, 755 (2006). The first rule in interpreting a statute is to construe it just as it reads by giving words their ordinary and usually accepted meaning. *Tate II*, 311 Ark. at 409, 844 S.W.2d at 359. While the provisions of the Workers' Compensation Law are to be strictly construed, Arkansas Code Annotated section 11-9-704(c)(3) (Repl. 2002), individual statutes relating to the same subject should be read in a harmonious manner, if possible, and all statutes on the same subject must be construed together and made to stand



if capable of being reconciled, *Tate II*, 311 Ark. at 410, 844 S.W.2d at 359. In interpreting a statute and attempting to construe legislative intent, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, legislative history, and other appropriate matters that throw light on the matter. *Id.* Additionally, we recognize that the Workers' Compensation Commission, as an administrative agency, is better equipped by specialization, insight through experience, and more flexible procedures than are courts to determine and analyze legal issues affecting its agency. *Lawhon Farm Servs. v. Brown*, 60 Ark. App. 64, 71, 958 S.W.2d 538, 540 (1997) *aff'd*, 335 Ark. 272, 984 S.W.2d 1 (1998). While not conclusive, the interpretation of a statute by an administrative agency is highly persuasive and will not be overturned unless it is clearly wrong. *Id.*

Arkansas Code Annotated section 11-9-502(b)(1)(A) (Supp. 2009) states that, for death caused by compensable injuries occurring between March 1, 1981, and December 31, 2007, an employer or its insurance carrier is responsible for paying weekly survivor benefits, up to \$75,000. Thereafter, a deceased employee's dependent is eligible to continue receiving weekly benefits, but "all benefits in excess of seventy-five thousand dollars (\$75,000) shall be payable from the Death and Permanent Total Disability Trust Fund." Ark. Code Ann. § 11-9-502(b)(2)(A). This limit on an employer's or insurance carrier's liability applies only to weekly benefits; the employer/insurance carrier is still responsible for any additional benefits to which a claimant is entitled, even after the \$75,000 cap has been reached. *Tate II*, 311 Ark. at 410, 844 S.W.2d at 359.



If a widow receiving weekly survivor benefits 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 to 11-9-506.” Ark. Code Ann. § 11-9-527(d)(1) (Repl. 2002). This lump-sum remarriage benefit is a separate benefit of a different nature than the weekly survivor benefits a widow receives prior to remarriage. *Death & Permanent Total Disability Trust Fund v. Tyson Foods, Inc.*, 304 Ark. 359, 362, 801 S.W.2d 653, 655 (1991). Although the wording of the statute contemplates “full and complete payment,” implying that weekly survivor benefits might cease prior to a widow’s remarriage, our supreme court has held that the “full and complete payment” language was inadvertently left in the statute from a time when it had relevance, but now the phrase is “meaningless surplusage.” *Tate II*, 311 Ark. at 411, 844 S.W.2d at 360.

In their brief, appellants argue that strict interpretation of Arkansas Code Annotated section 11-9-502(b)(2)(A), which states that “all benefits in excess of seventy-five thousand dollars (\$75,000) shall be payable from the Death and Permanent Total Disability Trust Fund,” absolves them from liability for Mrs. Wyatt’s remarriage benefit because they have already reached the \$75,000 cap. However, this argument isolates a single statute and fails to consider the Workers’ Compensation Law as a whole. While section 11-9-502(b) deals specifically with weekly death and permanent-total-disability benefits, other sections of the law provide for different types of benefits, such as the remarriage benefit described in section 11-9-527(d)(1). Case law dictates that the remarriage benefit is a completely separate benefit



from weekly death benefits. *See Tyson*, 304 Ark. at 362, 801 S.W.2d at 655. There is nothing in the statute to indicate that the language of section 11-9-502(b), dealing with weekly benefits, applies to anything other than weekly benefits.

Furthermore, we are bound by the supreme court's reasoning in *Tate II, supra*. In that case, as in this one, a deceased employee's widow received weekly survivor benefits from the employer/insurance carrier until the statutory cap was reached, at which point she began receiving weekly payments from the Fund. *Tate II*, 311 Ark. at 407, 844 S.W.2d at 357. The widow later remarried and requested her lump-sum remarriage benefit. *Id.*, 844 S.W.2d at 358. The employer/insurance carrier contended that the Fund was liable for the remarriage benefit or, in the alternative, that the widow was not entitled to a remarriage benefit at all because the employer/insurance carrier had already made "full and complete payment" to her. *Id.* at 407-08, 844 S.W.2d at 358. The Commission disagreed, based on the reasoning in *Tyson, supra*. *Id.* at 409, 844 S.W.2d at 358. This court affirmed the Commission's decision in *City of Fort Smith v. Tate (Tate I)*, 38 Ark. App. 172, 832 S.W.2d 262 (1992) *aff'd*, 311 Ark. 405, 844 S.W.2d 356 (1993), and our supreme court adopted this court's opinion almost verbatim. Although a great deal of that opinion is devoted to interpretation of the "full and complete payment" language of section 11-9-527(d)(1), the ultimate holding was that the employer/insurance carrier—not the Fund—was responsible for paying the widow's remarriage benefit, despite having previously reached the statutory cap on weekly benefit payments. *Tate II*, 311 Ark. at 411, 844 S.W.2d at 360.



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Appellants argue that *Tate II* is distinguishable from this case because its holding was based on liberal construction of the statutes to favor the claimant, whereas the standard now is to construe workers' compensation statutes strictly. Because the determination of which party is responsible for paying the remarriage benefit does not affect whether the claimant actually receives the benefit, the change in standard is irrelevant in this case. Nothing in *Tate II* indicates that the court relied on liberal construction of the statutes in deciding that the employer/insurance carrier—and not the Fund—was responsible for the payment.

Appellants also contend that the issue in *Tate II* was different from this case because appellants in the present case do not contest Mrs. Wyatt's entitlement to the remarriage benefit. However, a close reading of *Tate II* shows that the court considered both issues: whether the widow was entitled to the remarriage benefit, and if so, who was responsible for paying it. Therefore, these attempts to distinguish *Tate II* fail.

Finally, appellants contend that the controlling case law for this issue should be *Death & Permanent Total Disability Fund v. Legacy Insurance Services*, 95 Ark. App. 189, 235 S.W.3d 544 (2006), in which this court reviewed the issue of whether an insurance carrier was entitled to credit for payments made toward a permanent-anatomical-impairment rating against its statutory cap on permanent-total-disability benefits. The *Legacy* case did not involve remarriage benefits, which have been determined to be a completely separate type of benefit, and so it is clearly distinguishable from the present case. Its holding is not relevant to the issue of which party is responsible for paying remarriage benefits.



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For these reasons, we affirm the decision of the Commission to hold appellants liable for Mrs. Wyatt's remarriage benefits. The Commission's interpretation of the Workers' Compensation Law is highly persuasive and is supported by case law.

Affirmed.

PITTMAN and MARTIN, JJ., agree.

Coplin, Hardy & Stotts, PLLC, by: *Betty J. Hardy*, for appellants.

David L. Pake, for appellee.