

**ARKANSAS COURT OF APPEALS**

DIVISION III

**No.** CA10-452

JOHN O'HARA

APPELLANT

V.

DEATH & PERMANENT DISABILITY  
TRUST FUND

APPELLEE

**Opinion Delivered** OCTOBER 20, 2010

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. E306806]

REVERSED and REMANDED

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**ROBERT J. GLADWIN, Judge**

This appeal follows the March 30, 2010 decision of the Workers' Compensation Commission (Commission) affirming and adopting the September 16, 2009 opinion of the Administrative Law Judge (ALJ), denying appellant's request to have appellee Death and Permanent Disability Trust Fund (Fund) pay his fifty-percent portion of the attorney's fee awarded in this case in a lump sum. Appellant John O'Hara argues that the Commission erred in finding that it did not have authority to order that the attorney's fee be paid in a lump sum by the Fund. We agree and reverse and remand for further proceedings.

Appellant was injured in the course and scope of his employment in March 1993. This case has been subject to three prior decisions of the Arkansas Court of Appeals: (1) *O'Hara v. J. Christy Constr. Co.*, CA 98-599 (Ark. Ct. App. Mar. 3, 1999) (unpublished); (2) *O'Hara*

*v. J. Christy Constr. Co.*, 94 Ark. App. 143, 227 S.W.3d 443 (2006); (3) and *O'Hara v. J. Christy Constr. Co.*, 101 Ark. App. 212, 272 S.W.3d 842 (2008), with appellant eventually being determined by the Commission to be permanently and totally disabled as of August 15, 2003, by an order dated May 10, 2006. That order was not appealed.

Appellant and his attorney, Floyd M. Thomas, determined that it was in their collective best interest that appellant's fifty-percent portion of the attorney's fee be paid to Thomas in a lump sum, with the application of the appropriate discount pursuant to Arkansas Code Annotated section 11-9-715 (Repl. 1996) and Arkansas Code Annotated section 11-9-716 (Repl. 1996).<sup>1</sup> The respondent insurance carrier, Travelers Casualty & Surety Co., agreed and has paid its fifty-percent portion of the attorney's fee in a lump sum of \$5,670.40, pursuant to an agreed order approved by the ALJ and filed on June 29, 2009. Appellant continues to draw his benefits from the Fund pursuant to Arkansas Code Annotated section 11-9-502 (Repl 1996), and the Fund has objected to paying appellant's remaining fifty-percent portion of the attorney's fee in a lump sum rather than the continued \$25.12 biweekly payments. The ALJ in an opinion filed on September 16, 2009, and adopted by the Commission on March 30, 2010, found that the Commission has no authority to order that appellant's portion of the attorney's fee be paid in a lump sum by the Fund. Appellant filed a notice of appeal on April 9, 2010, and this appeal followed.

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<sup>1</sup>Because appellant's injury occurred before July 1, 2001, the attorney's fee in question is governed by the provisions of Arkansas Code Annotated sections 11-9-715 and 716 as they existed prior to the amendments of Act 1281 of 2001.

This case involves the interpretation of a statute. Appellate courts review questions of law *de novo*. It is for the appellate court to determine the meaning of a statute. *Pro-Comp Mgmt., Inc. v. R.K. Enters., LLC*, 372 Ark. 190, 272 S.W.3d 91 (2008).

Appellant contends that the Commission erred in finding that it had no authority to order a lump-sum attorney's fee to be paid out of appellant's portion of the funds coming to him from the Fund. We agree. Arkansas Code Annotated section 11-9-716 states:

- (a) The Workers' Compensation Commission is authorized to approve lump-sum attorney's fees for legal services rendered in respect of a claim before the commission.
- (b) The lump-sum attorney's fees are allowable notwithstanding that the award of compensation to the injured employee is to be paid on an installment basis.
- (c) Lump-sum attorney's fees, if approved by the commission, shall be discounted at the rate provided in § 11-9-804, as that provision may be amended from time to time.

Despite the clear language in Arkansas Code Annotated section 11-9-716 that authorizes lump-sum attorney's fees, the Commission, by adopting the decision of the ALJ, found that it lacked the authority to award a lump-sum attorney's fee in the instant case. We hold that the Commission's ruling is clearly erroneous as a matter of law; accordingly, we reverse and remand the decision of the Commission for further proceedings regarding the issue of how and in what manner appellant's fifty-percent portion of the attorney's fee is to be paid to Thomas.

Reversed and remanded.

PITTMAN and BAKER, JJ., agree.