

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-799

PAULA ARD

APPELLANT

V.

DEATH AND PERMANENT TOTAL
DISABILITY TRUST FUND

APPELLEE

Opinion Delivered December 14, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F501764]

AFFIRMED

JOHN MAUZY PITTMAN, Judge

The issue for us to decide in this appeal is whether the Arkansas Workers' Compensation Commission erred in denying the request of appellant's attorney for payment of attorney's fees in a lump sum. We find no error, and we affirm.

This case has been the subject of litigation since 2005, including an unpublished opinion of this court holding that the Commission erred in finding that appellant failed to prove a compensable injury by objective findings. *Ard v. St. Vincent Health Services*, 2009 Ark. App. 221 (not designated for publication). Ultimately, the appellant prevailed before the Commission and was found to be permanently and totally disabled as the result of a compensable back injury. Appellant's attorney was entitled to a fee, half of which was payable by the employer's insurer and half of which was payable by the appellant out of her compensation benefits. See Ark. Code Ann. § 11-9-715(a)(2)(B) (Repl. 2002). The attorney filed a request for payment of his fee in a lump sum on October 25, 2010, pursuant to Ark.



Code Ann. § 11-9-716 (Repl. 2002) and *O'Hara v. Death & Permanent Total Disability Trust Fund*, 2010 Ark. App. 685. The employer's insurer agreed to pay its share of attorney's fees in a lump sum. Appellee Death and Permanent Total Disability Trust Fund, which was paying appellant's portion of the attorney's fee out of the compensation that it was paying to appellant, did not agree. The Fund argued that a lump-sum payment of attorney's fees would force it to assume the risk of overpayment should either the appellant or the attorney die or should the appellant become ineligible to receive benefits pursuant to either Ark. Code Ann. § 11-9-519 (Repl. 2002) or § 11-9-713 (Repl. 2002) prior to the Fund's ability to recoup the lump-sum payment out of weekly benefits being paid to the appellant.

The administrative law judge, noting that the appellant was fifty-five years of age and that the requested lump-sum payment could be recouped in 8.82 years, found the request to be reasonable and ordered the Fund to pay the appellant's portion of the attorney's fee in a lump sum. On de novo review, the Commission noted that approval of a lump-sum attorney's fee was discretionary with the Commission, found that appellant failed to present any compelling reason for the Commission to order the Fund to pay attorney's fees in a lump sum, and denied the request. This appeal followed.

Arkansas Code Annotated section 11-9-716 provides for lump-sum attorney's fees:

(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.

Attorney's fees in workers' compensation cases are provided by statute in Arkansas as a matter of public policy to enable injured workers to obtain the services of an attorney in settlement of controverted claims. *Aluminum Company of America v. Neal*, 4 Ark. App. 11, 626 S.W.2d 620 (1982). Here, however, the appellant has obtained the services of a competent attorney, and the question is not whether that attorney is entitled to fees but instead whether that attorney is entitled to receive payment of those fees in a lump sum from both the employer's insurer and the Fund. Appellant's attorney *has* received the fees owed by appellant's employer in a lump sum. The employer was the only party who controverted the claim; the Fund did not controvert the claim, and no attorney's fees were awarded against the Fund.

There is nothing in section 11-9-716 that requires the Commission to approve a lump-sum payment of the entire amount of an attorney's fee or that prohibits the Commission from approving a plan by which an attorney's fee is paid partly by lump sum and partly in installments. *Seward v. The Bud Avants Co.*, 65 Ark. App. 88, 985 S.W.2d 332 (1999). On appeal, we will not interfere with the Commission's determination on the issue of attorney's fees unless there is an abuse of discretion, *Littlejohn v. Earle Industries*, 239 Ark. 439, 389 S.W.2d 898 (1965), and abuse of discretion is a high threshold that does not simply require error in the decision, but requires that the tribunal act improvidently, thoughtlessly, or without due consideration. *See Bailey v. Delta Trust & Bank*, 359 Ark. 424, 198 S.W.3d



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506 (2004). On this record, we cannot say that the Commission abused its discretion in declining to order the appellee Fund to pay appellant's portion of the attorney's fee in a lump sum.

Affirmed.

VAUGHT, C.J., and GRUBER, J., agree.