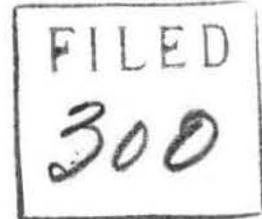


August 28, 1964



Mr. Charles E. Cates
Member, Industrial Commission
State Office Building
Jefferson City, Missouri

Dear Mr. Cates:

You have directed an inquiry to this office in which the substance of inquiry may, I believe, be stated as follows:

- (1) Does the Industrial Commission have authority to commute awards made by the Commission against the Second Injury Fund.
- (2) Does the Industrial Commission have authority to authorize lump sum settlements of attorney's fees from the Second Injury Fund.
- (3) Can payments be made from the Second Injury Fund after the death of an injured employee.

Commutation of awards are dealt with in Section 287.530. This section provides in part as follows:

"1. The compensation provided in this chapter may be commuted by said commission and redeemed by the payment in whole or in part, by the employer, of a lump sum which shall be fixed by the commission * * *".

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It will be noticed that in this section there is only a reference to commutation as between the employee and the employer. There is no reference to commutation with respect to compensation claims payable out of the Second Injury Fund. We regard this language as significant. In the absence of authority to commute an award against the Second Injury Fund, it is our opinion that such authority does not exist.

With reference to the second question, authority for lump sum payment of attorney's fees is included in Section 287.260, RSMo 1959. This section exempts compensation from attachment, garnishment, and execution and then contains the following language:

"* * * save that if written notice is given to the commission of the nature and extent thereof, the commission may allow as lien on the compensation, reasonable attorney's fees for services in connection with the proceedings for compensation if such services are found to be necessary and may order the amount thereof paid to the attorney in a lump sum or in installments. * * *"

This section appears to be dealing solely with the matter of compensation as between the employee and the employer and does not either directly or by inference refer to claims against the Second Injury Fund. We, therefore, conclude that the language which authorizes the Commission to order the amount of attorney's fees to be paid in a lump sum does not authorize the payment of attorney's fees in a lump sum from the Second Injury Fund. This is particularly true in the light of the consideration hereinafter discussed in answer to the third question.

The third question relates to the liability of the Second Injury Fund after the death of the injured employee. Section 287.220, RSMo 1959, clearly contemplates that the compensation payable out of the Second Injury Fund is to be paid only after completion of the payment of compensation by the employer for

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either permanent partial or permanent total disability. With respect to the liability of the employer after the death of the employee, Section 287.230, RSMo 1959, provides for two situations, the first, where death results from the injury and the second, where death results from some other cause. In the first situation, death is deemed the termination of disability, no doubt because the employer--and the employer alone--would be liable to any dependents for the death benefit less the amount of compensation theretofore paid. It would follow in this situation that the dependents would have no claim against the Second Injury Fund. In the second situation (death from unrelated causes) payments of the unpaid, unaccrued balance of compensation ceases and all liability therefor terminates unless there be surviving dependents at the time of such death. Although this statute has been construed (without discussion of the basis for determining this precise point) to mean that the right to the compensation and to make claim therefor survives to the dependents, we believe that absent a specific legislative declaration that surviving dependents are entitled to unpaid and unaccrued compensation payable out of the Second Injury Fund, the rights of the dependents are limited to the compensation payable by the employer. It would appear to us that different considerations are applicable and that unless the legislature specifically declared otherwise, the surviving dependents in this situation should not receive payments out of the Second Injury Fund. The foregoing would seem to strengthen our view that compensation payments under the Second Injury Fund may not be commuted nor should attorney's fees be paid in a lump sum therefrom.

I hope this adequately explains our views regarding this problem. If you have any other questions, we will attempt to answer them.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JGS:cs:lo