

ORDER

Injury No.: 94-146300

Employee: Daniel Boone
Employer: St. Louis County, Missouri (Settled)
Insurer: Self-Insured (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

By an Award dated September 2, 1998, an Administrative Law Judge (ALJ) awarded permanent total disability benefits from the Second Injury Fund (SIF) to employee Daniel Boone. The Award allowed an attorney's fee and lien to employee's counsel, James Haffner, in the amount of 25% of all payments thereunder.

On July 10, 2018, the Commission received a motion from attorney Paul F. Horgan, suggesting the death of attorney James Haffner. Attorney Horgan's motion alleged that attorney Haffner's widow, Regina Haffner, is the sole owner of his real and personal property and that Mrs. Haffner had retained attorney Horgan to handle the distribution of the weekly benefits owed employee Mr. Boone from the SIF in this matter and in addition to distribute Mr. Haffner's attorney's fee to his wife, Regina Haffner.

At the Commission's request, attorney Horgan has provided additional information including (1) employee Mr. Boone's current address; (2) a copy of James Haffner's Last Will and Testament; (3) a copy of the probate court's February 22, 2018 refusal of letters; and (4) an affidavit signed by Mrs. Haffner attesting that she is attorney Haffner's widow and surviving spouse with sole successor rights to any unpaid attorney's fees earned in his law practice.

On December 14, 2018, the Commission issued an order directing all interested parties to show cause within thirty (30) days of the date of its order why the Commission should not enter an order finding: (1) that attorney Haffner died on September 8, 2017; (2) that Mrs. Haffner remained married to Mr. Haffner at the time of his death and is sole successor to his rights in this matter; and (3) that attorney Paul F. Horgan has entered his appearance on behalf of Mrs. Haffner in this matter.

The Commission's show cause order noted that, barring review on the ground of a change of condition pursuant to § 287.470, we have no statutory authority to modify the compensation awarded or the attorney's fee allowed in the September 2, 1998, Award. Nor are we authorized to direct that the attorney's fee provided for in the Award to be paid to an individual and/or entity other than attorney James Haffner.¹

¹ See *Keaney v. Treasurer of Mo.*, 415 S.W.3d 774 (Mo. App. 2013); *Falk v. Barry, Inc.*, 158 S.W.3d 327 (Mo. App. 2005).

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The order further noted that Section 287.580 RSMo provides:

If any party shall die pending any proceedings under this chapter, the same shall not abate, but on notice to the parties may be revived and proceed in favor of the successor to the rights or against the personal representative of the party liable, in like manner as in civil actions.

On February 14, 2019, employee Mr. Boone filed a pro se response to the Commission's show cause order, objecting to the Commission's appointment of a successor to attorney James Haffner's rights, if any, to received continued distribution of attorney Haffner's attorney's fee, following his death. Noting that § 287.580 RSMo speaks to the rights of a party who shall die pending any proceedings under chapter 287, Mr. Boone suggests that attorney Haffner "is not a party to this proceeding and that any lien rights that he may have been afforded with respect to the payment of his fee do not elevate his status, nor that of his successor, to one of being a **party** in the subject proceeding."² (emphasis in original). Employee Mr. Boone requests that the Commission determine that it has no jurisdiction to consider the motion filed on behalf of attorney Haffner and/or his widow and deny the motion.

Mr. Boone cites the Commission's November 30, 2018, order in the case of *Richard Leonard v. Novacare, Inc.*, Injury No. 98-113992, in support of his argument that attorney James Haffner has no standing as a party to enforce his lien in the amount of 25% of all payments to employee pursuant to the ALJ's September 2, 1998, award. In *Leonard*, the Commission denied the request of a deceased attorney's estate to *change the payee* of attorney's fees owed under a final award to the attorney's living trust, noting that it lacked statutory authority to modify a previously allowed fee. In the same order, the Commission substituted the deceased attorney's personal representative as his successor to pursue the attorney's fee lien rights in the matter pursuant to § 287.580. We are not persuaded that the Commission's November 30, 2018, order in the case of Richard Leonard lends any support to the employee's argument that attorney Haffner's lien rights afford him no standing to assert an interest in this proceeding.

In *Wright v. Bartimus Frickleton Robertson & Gorny PC*, 364 S.W.3d 558 (Mo. App. 2011), the court stated:

[I]f an attorney asserting a lien elects to enforce the lien by filing a motion in the original case, the attorney has voluntarily subjected himself to the court's personal jurisdiction for that purpose, and is treated as a "party," with standing to assert an interest in any verdict, report, decision, judgment, or settlement, **even though the attorney is not named in the case caption and has not formally intervened.**³ (emphasis in original).

² Response of Daniel Boone fo Order to Show Cause, filed February 14, 2019.

³ *Wright v. Bartimus Frickleton Robertson & Gorny PC*, 364 S.W.3d 558, 568 (Mo. App. 2011). See also *Reed v. Garner Industries, Inc.*, 832 S.W.2d 945 (Mo. App. 1992).

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Based on this authority, pursuant to the July 10, 2018, motion filed by attorney Paul F. Horgan on behalf of Regina Haffner, we treat attorney James Haffner as a party to this matter. We further find that § 287.580 authorizes the Commission to designate Regina Haffner as attorney James Haffner's successor to pursue his attorney lien rights pursuant to the September 2, 1998, administrative law judge's award.

We find:

- 1. Employee Daniel Boone's attorney of record in this matter, James Haffner, died on September 8, 2017;
- 2. Regina Haffner remained married to Mr. Haffner at the time of his death and is sole successor to his rights in this matter;
- 3. Attorney Paul F. Horgan has entered his appearance on behalf of Regina Haffner in this proceeding.

We substitute Regina Haffner as attorney James Haffner's successor and the proper party to pursue attorney Haffner's attorney lien rights in this matter.

Order

Pursuant to § 287.580 and Supreme Court Rule 52.13(a) this matter may proceed in favor of Regina Haffner. We substitute Regina Haffner, represented by attorney Paul F. Horgan, as the proper party to pursue James Haffner's rights in this matter.

Given at Jefferson City, State of Missouri this 3rd day of May 2019.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



[Handwritten signature of Robert W. Cornejo]

Robert W. Cornejo, Chairman

[Handwritten signature of Reid K. Forrester]

Reid K. Forrester, Member

[Handwritten signature of Curtis E. Chick, Jr.]

Curtis E. Chick, Jr., Member

Attest:

[Handwritten signature of Daniel M. Horgan]
Secretary