

ORDER OF COMMISSION

Injury No. 03-059155

Employee: Robert Gates
Employer: Havens Steel Company (Settled)
Insurer: Self-Insured (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

By award dated October 4, 2005, the administrative law judge awarded weekly permanent total benefits from the Second Injury Fund to employee. The award also allowed an attorney fee to employee's counsel, Mr. Patrick Starke, in the amount of twenty-five percent (25%) of all sums awarded, with the fees constituting a lien on the compensation.

On August 1, 2018, Attorney Starke filed a Motion to Change Payee of Awarded Attorney Fees (Motion), asking the Commission to direct the Second Injury Fund to pay the above-described attorney fee to the "Patrick B. Starke Living Trust Agreement." Employee signed a Consent to Motion to Change Payee of Awarded Attorney Fees.

Discussion

The Motion requests that we modify the provision of the administrative law judge's award of October 4, 2005, allowing Mr. Patrick Starke an attorney fee in the amount of twenty-five percent of all payments thereunder, such that the fee will instead be paid to the Patrick B. Starke Living Trust Agreement. The Motion cites no legal authority in support of this request.

We recognize that prior Commissions have, on occasion, granted similar requests. We are concerned, however, that we lack statutory authority to grant such relief, or to adjudicate any dispute that may arise should any party object to the request.

Section 287.260 RSMo defines the scope of Commission authority with regard to an allowance of attorney's fees, and provides, in relevant part, as follows:

[T]he division or the commission may allow as lien on the compensation, reasonable attorney's fees for services in connection with the proceedings for compensation if the services are found to be necessary and may order the amount thereof paid to the attorney in a lump sum or in installments. All attorney's fees for services in connection with this chapter shall be subject to regulation by the division or the commission and shall be limited to such charges as are fair and reasonable and the division or the commission shall have jurisdiction to hear and determine all disputes concerning the same.

While the foregoing clearly authorizes the Commission to allow a fair and reasonable attorney's fee in a workers' compensation case, the statute is silent with regard to

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Commission authority to *modify* a previously allowed fee. While the statute does reference Commission authority to “regulate” and to resolve “all disputes” concerning attorney’s fees, the courts have clarified that “the statute authorizes the Commission to resolve disputes *concerning the fairness and the reasonableness of the fees charged, nothing more* (emphasis added).” *Hunt v. Laclede Gas Co.*, 869 S.W.2d 770, 773 (Mo. App. 1993). In *Hunt*, the court reversed a Commission decision that purported to resolve a dispute between two attorneys as to how an attorney fee should be split in the context of the dissolution of a law firm. *Id.* at 774.

In holding that the Commission lacked authority to resolve that particular dispute, the court provided the following comments, which we deem instructive herein:

The Commission is an administrative agency created by statute and limited in its jurisdiction by the terms of the statute. It is not a court of general jurisdiction. ... The quasi-judicial power conferred upon an executive agency is limited to the ascertainment of facts and the application of existing law in order to resolve issues within the given area of agency expertise. ... [T]he Commission exceeded its jurisdiction by attempting to resolve the dispute between the shareholders of the professional corporation. Such issues should be addressed in a court of general jurisdiction.

Hunt, 869 S.W.2d at 773-74.

As in *Hunt*, the question now posed to the Commission (whether an attorney is entitled to transfer to another individual or to a trust the right to payment of a previously allowed attorney fee) would appear to implicate numerous legal issues, such as the contractual rights between attorney and client, that go beyond the scope of the Commission’s expertise in workers’ compensation matters. Applying the reasoning of the *Hunt* court, such questions should therefore be addressed, instead, in a court of general jurisdiction.

More recently, in the case of *Keaney v. Treasurer of Mo.*, 415 S.W.3d 774 (Mo. App. 2013), the court reversed a Commission decision purporting to modify an attorney fee lien that was previously granted in a 1995 award, so that it would instead be paid in a lump sum to the attorney’s estate following the attorney’s death in 2012:

Although we find that section 287.260 allowed the Commission to determine the reasonableness of the lien and the manner of payment in 1995, we note that the plain language of the statute does not provide further authority to modify the fees after the award became final. ... We construe the Commission's authority to grant an attorney lien and determine the manner of payment under section 287.260 in conjunction with the finality limits under section 287.495. Although no temporal limits to the Commission's authority are expressly stated in 287.260, under section 287.495 the final award of the Commission is conclusive and binding unless appealed within thirty days.

Id. at 777.

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We find the foregoing analysis and holding from *Keaney* dispositive. To the extent that the Motion to Change Payee of Awarded Attorney Fees asks the Commission to enter an order modifying the allowance of attorney fees to direct that same be paid to an individual and/or entity other than Mr. Patrick Starke, we conclude that the Commission lacks authority to grant the relief requested. We conclude that the appropriate forum for such a request is a court of general jurisdiction over the various legal issues that may be implicated by the Motion.

We note that any final award or approved settlement may be registered as a judgment pursuant to § 287.500 RSMo by filing a certified copy of same with the circuit court of the county in which the accident occurred. Thereafter, the parties may petition the court to grant the relief requested, and/or to resolve any disputes that may be implicated by, the Motion.

Order

Because the administrative law judge's award of October 4, 2005, is final, and because the Commission lacks statutory authority to modify the allowance of attorney's fees set forth in same, the Motion to Change Payee of Awarded Attorney Fees is dismissed for lack of jurisdiction.

Given at Jefferson City, State of Missouri, this 20th day of November 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



[Signature]
Robert W. Cornejo, Chairman

[Signature]
Reid K. Forrester, Member

[Signature]
Curtis E. Chick, Jr., Member

Attest:

[Signature]
Secretary