

ORDER

Injury No.: 99-174574

Employee: Mark Harvey, deceased
Dependents: Jessica Kathryn Harvey, surviving child
Employer: Tri-State Motor Transit Company
Insurer: Missouri Private Sector Individual Self-Insurers Guaranty Corporation

Introduction

By award dated March 15, 2002, an administrative law judge awarded death benefits in the amount of \$562.67 per week from the employer/insurer to employee's dependent child, Jessica Kathryn Harvey. The administrative law judge also ordered the employer/insurer to make a lump sum payment to employee's surviving spouse, Linda Sue Harvey, to account for the remarriage benefit under § 287.240 RSMo.

On April 11, 2018, the Labor and Industrial Relations Commission (Commission) received correspondence from employer/insurer requesting that the Commission close its file in this matter, because Jessica Kathryn Harvey has not attended school since September 6, 2016. The Commission considered this correspondence a motion that the Commission enter an order modifying the March 15, 2002, award to suspend employer/insurer's obligation to pay weekly death benefits to Jessica Kathryn Harvey during the time period that she is not entitled to same pursuant to the Missouri Workers' Compensation Law.

On August 21, 2018, the Commission issued a show cause order directing all interested parties to show cause within 30 days why the Commission should not enter an order modifying the award to find that payment of weekly death benefits to Jessica Kathryn Harvey should be suspended effective September 6, 2016.

No responses have been received to the order to show cause.

Discussion

Despite the absence of any objection to the Commission's order to show cause, we are mindful of the need, in any matter brought before the Commission, to first undertake our own determination whether a particular request is within the scope of relief the Commission is authorized by law to provide:

Agency adjudicative power extends only to the ascertainment of facts and the application of existing law to the facts in order to resolve issues within areas of agency expertise. Like all administrative bodies, the commission has only such jurisdiction as is conferred upon it by statute. The legislature has granted the commission those powers necessary to the proper discharge of its duties under the workers' compensation law.

Mikel v. Pott Indus., 896 S.W.2d 624, 626 (Mo. 1995) (citations omitted).

Employer/insurer's correspondence requests that the Commission "close the file" in this case; we take this as a request that the Commission enter an order addressing the extent of employer/insurer's liability to pay weekly death benefits pursuant to the administrative law judge's award of March 15, 2002, and in particular, whether such liability should be terminated or suspended because of the suggestion that Jessica Kathryn Harvey is no longer attending

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school. Accordingly, the first question we must answer is whether the Commission is authorized to issue such an order.

We first note that, within § 287.240 RSMo, the legislature has granted the Commission the authority to modify awards of death benefits, but only to the extent of changing the payee that receives a child dependent's weekly payment. Specifically, § 287.240(4) provides as follows:

The division or the commission may, in its discretion, order or award the share of compensation of any such child to be paid to the parent, grandparent, or other adult next of kin or conservator of the child for the latter's support, maintenance and education, which order or award upon notice to the parties may be modified from time to time by the commission in its discretion with respect to the person to whom shall be paid the amount of the order or award remaining unpaid at the time of the modification[.]

Pursuant to § 287.800.1 RSMo, we must strictly construe the language of Chapter 287.¹ "[A] strict construction of a statute presumes nothing that is not expressed." *Allcorn v. Tap Enters.*, 277 S.W.3d 823, 828 (Mo. App. 2009). The legislature did not express any other basis for modifying an award of death benefits in § 287.240. Under the rule of statutory construction known as *expressio unius est exclusio alterius* ("the explicit mention of one thing is the exclusion of another") the legislature's choice to provide only one specific basis under § 287.240(4) for modifying an award of death benefits would tend to indicate the legislature did not intend for the Commission to modify such awards for any other reason or in any other fashion.

Of course, § 287.470 RSMo allows the Commission to modify any award upon a "change in condition," but this phrase has been consistently construed in Missouri to mean a change in the physical condition of the employee causally related to the work injury occurring after the original award of compensation was issued,² and the courts have specifically rejected the argument that § 287.470 authorizes the Commission to modify an award of death benefits upon the request of an employer/insurer seeking credit for an overpayment:

Missouri law is very clear that Section 287.470 requires that an application for review demonstrate a change in the physical condition of the claimant before the Commission has jurisdiction to review the award. Accordingly, the Commission was without jurisdiction to entertain Appellants' application for review. ... Decades of case law have denied the Commission such statutory authority. The legislature alone can enlarge the Commission's authority in this area.

Sachs Elec. Co. v. Mapes, 254 S.W.3d 900, 902-03 (Mo. App. 2008)(citations omitted).

In another case that appears to be directly on point, the court held that the Commission lacked jurisdiction to declare the extent of an employer/insurer's obligations pursuant to a prior award of death benefits:

The Commission's final award was entered on June 23, 1986. ... Barry made the weekly payments through its insurance carrier, Liberty Mutual Insurance Company (Liberty Mutual), until December of 2003. ... Counsel for Mrs. Veronica

¹ "Administrative law judges, associate administrative law judges, legal advisors, the labor and industrial relations commission, the division of workers' compensation, and any reviewing courts shall construe the provisions of this chapter strictly." § 287.800.1 RSMo.

² See, e.g., *Bunker v. Rural Elec. Coop.*, 46 S.W.3d 641, 646 (Mo. App. 2001).

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Falk, widow of Danny Falk, wrote a letter to the Commission dated December 30, 2003, requesting a hearing and determination as to why benefits were stopped. ... [T]he Commission properly concluded that it was without authority to amend the award because the time for appeal of the award had expired. Effectively, the Commission is without authority to further delineate the award or expound on its meaning. The conclusion of the Commission was simply that Barry was, thus, required to abide by the terms of the award, whatever the award requires. An administrative tribunal is a creature of statute and exercises only that authority invested by legislative enactment.

Falk v. Barry, Inc., 158 S.W.3d 327, 328-29 (Mo. App. 2005)(citations omitted).

While it would certainly appear to us that Jessica Kathryn Harvey is not entitled to the receipt of weekly death benefits as of the date she stopped attending school, we must ultimately conclude that we are without statutory authority to modify the award of March 15, 2002, or to enter an order further delineating such award. Instead, we conclude that the parties are required to abide by the terms of the award, whatever the award requires, as read together with the relevant provisions of the Missouri Workers' Compensation Law.

We further note that, pursuant to § 287.500 RSMo, any party may file in circuit court a certified copy of the award of March 15, 2002, and secure a judgment in accordance therewith. It appears that any question over the extent of employer/insurer's obligations pursuant to the award could be resolved in the context of a proceeding before the circuit court in connection with said judgment, as demonstrated in *Schneidler v. Feeder's Grain & Supply*, 24 S.W.3d 739 (Mo. App. 2000).

Order

The Commission is not authorized to consider employer/insurer's request. Accordingly, the request is hereby dismissed.

Given at Jefferson City, State of Missouri, this 21st day of February 2019.



LABOR AND INDUSTRIAL RELATIONS COMMISSION

Robert W. Corneja, Chairman

Reid K. Forrester, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

