

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA12-27

EARVIN DAVIS, JR.

APPELLANT

V.

ACTION MECHANICAL, CNA
INSURANCE COMPANY, AND
SECOND INJURY FUND

APPELLEES

Opinion Delivered September 19, 2012

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F701958]

AFFIRMED ON CROSS-APPEAL

WAYMOND M. BROWN, Judge

Appellant Earvin Davis, Jr., appeals from a decision by the Arkansas Workers' Compensation Commission (Commission), which reversed the administrative law judge (ALJ) and found that pursuant to Arkansas Code Annotated section 11-9-804,¹ appellant was not entitled to a lump-sum payment from the Second Injury Fund (SIF). Appellee SIF cross-appeals, contending that the Commission did not have the authority to award Davis's attorney a lump-sum attorney fee payable by the SIF pursuant to Arkansas Code Annotated section 11-9-716.² SIF further contends that this court's ruling in *Lewis v. Auto Parts & Tire Co., Inc.*,³

¹(Repl. 2002).

²(Repl. 2002).

³104 Ark. App. 230, 290 S.W.3d 37 (2008) (holding that the Commission has the authority to approve lump-sum attorneys' fees from the SIF).

is erroneous and should be overruled. We initially remanded this case to supplement the record.⁴ Following remand, Davis filed a motion to dismiss his direct appeal. That motion was granted by a formal order issued on May 16, 2012. Although the formal order dismissed Davis's direct appeal, it allowed SIF's cross-appeal to remain active. We find no error and affirm on cross-appeal.

We review issues of statutory construction de novo, as it is for this court to decide what a statute means.⁵ Arkansas Code Annotated section 11-9-704(c)(3)⁶ requires that we construe workers' compensation statutes strictly. Strict construction requires that nothing be taken as intended that is not clearly expressed, and its doctrine is to use the plain meaning of the language employed.⁷ The basic rule of statutory construction, to which all other interpretive guides must yield, is to give effect to the intent of the legislature.⁸ When a statute is clear, however, it is given its plain meaning, and the appellate court will not search for legislative intent; rather, that intent must be gathered from the plain meaning of the language used.⁹ A statute is ambiguous only where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain

⁴See *Davis v. Action Mech.*, 2012 Ark. App. 278.

⁵*Johnson v. Bonds Fertilizer, Inc.*, 365 Ark. 133, 226 S.W.3d 753 (2006).

⁶(Repl. 2002).

⁷*Am. Standard Travelers Indem. Co. v. Post*, 78 Ark. App. 79, 77 S.W.3d 554 (2002).

⁸*Teasley v. Hermann Cos., Inc.*, 92 Ark. App. 40, 211 S.W.3d 40 (2005).

⁹ *Id.*

as to its meaning.¹⁰ In considering the meaning of a statute, we construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language.¹¹ The statute should be construed so that no word is left void, superfluous, or insignificant; and meaning and effect must be given to every word in the statute if possible.¹²

Arkansas Code Annotated sections 11-9-715 and 11-9-716 should be read in conjunction.¹³ Section 11-9-715 allows the Commission to award fees for legal services from the SIF when a claim has been controverted. Section 11-9-716 grants the Commission the authority to approve lump-sum attorney's fees. Strictly construing these statutes, it is clear that an award of lump-sum attorney's fees is not limited to employers. Unlike § 11-9-804,¹⁴ no particular respondent is mentioned by name. Therefore, we hold that the Commission did have the authority to award lump-sum attorney's fees from the SIF.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* (citing *Int'l Paper Co. v. McBride*, 12 Ark. App. 400, 678 S.W.2d 375 (1984)).

¹⁴ Arkansas Code Annotated section 11-9-804 states in pertinent part:

(a)(1) Whenever the Workers' Compensation Commission determines that it is for the *best interest* of the parties entitled to compensation, and after due notice to all parties in interest of a hearing, the liability of the *employer* for compensation may be discharged by the payment of a lump sum equal to the present value of all future payments of compensation computed at ten percent (10%) discount, compounded annually. (Emphasis added.)

SIF urges us to overrule *Lewis*, because this court did not “review the *interpretation* of subsection 716 by the Commission, an *administrative agency*, in accordance with its own previously announced standard of review.” It argues that the *Lewis* court erroneously held that the SIF stands in lieu of the employer. According to SIF, *Lewis* was the result of flawed interpretation and an inaccurate appraisal of the SIF’s role. SIF further argues that wasting of public funds will occur if the Commission is authorized to award lump-sum attorney’s fees from the fund.

Our supreme court has held:

[I]t is necessary, as a matter of public policy, to uphold prior decisions unless great injury or injustice would result. The policy behind stare decisis is to lend predictability and stability to the law. In matters of practice, adherence by a court to its own decisions is necessary and proper for the regularity and uniformity of practice, and that litigants may know with certainty the rules by which they must be governed in the conducting of their cases. Precedent governs until it gives a result so patently wrong, so manifestly unjust, that a break becomes unavoidable.¹⁵

SIF has been unable to show how the holding in *Lewis*,¹⁶ which states that the Commission has the authority to award lump-sum attorney’s fees from the SIF, is so patently wrong and manifestly unjust. Therefore, we decline its invitation to overrule it.

Alternatively, SIF asks this court to remand this case back to the Commission if we deny SIF’s request to overrule *Lewis*. According to SIF, the Commission did not enter sufficient findings of fact to support the award of lump-sum attorney’s fees. We note that there was no live testimony in this case. The parties submitted briefs on the issues to be

¹⁵*Bohot v. State Farm Mut. Auto. Ins. Co.*, 2012 Ark. 22, ___S.W.3d ___.

¹⁶*Supra.*

decided. In its argument against the payment of lump-sum attorney's fees from the fund, SIF stated that there was no statutory authority for such an award and it contended that it risked the possibility of overpayment if such fees were allowed. We deny SIF's request because "[t]he plain language of the statute authorizes the Commission to award lump sum attorneys' fees. No limitations are set forth because none were apparently intended. We must assume that the legislature intended to authorize the Commission to award such fees in any or all cases."¹⁷ Furthermore, we will not interfere with the Commission's determination on the issue of attorney's fees unless there is an abuse of discretion, and abuse of discretion is a high threshold that does not simply require error in the decision, but requires that the tribunal acted improvidently, thoughtlessly, or without due consideration.¹⁸ We cannot say that the Commission abused its discretion in ordering SIF to pay its portion of the attorney's fees in a lump-sum. Accordingly, we affirm.

Affirmed on cross-appeal.

ABRAMSON and HOOFFMAN, JJ., agree.

Freeman Law Firm, PLC, by: *Mark J. Freeman*, for appellant.

David L. Pake, for appellee Second Injury Fund.

¹⁷*Int'l Paper Co., supra.*

¹⁸*O'Hara v. J. Christy Constr. Co.*, 2012 Ark. App. 89.