

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Priscilla Anders, Widow of Alfred Anders,
Petitioner,

vs.

NO: 81 WC 52694

State of Illinois Treasurer's Office of Ex-Officio Custodian of
the Rate Adjustment Fund and William A. Lewis,
Respondent.

ORDER

Petition for Penalties under Section 19(k) of the Illinois Workers' Compensation Act having been filed by Petitioner herein and due notice given, this matter came on for hearing before the Illinois Workers' Compensation Commission on April 27, 2016 in Chicago, Illinois.

Upon consideration of said Petitionⁱ and the Commission's independent review of the record and file, the Commission is of the belief that Petitioner's Petition for Penalties should be denied but that Petitioner is entitled to an adjustment under the Rate Adjustment Fund.

It should be emphasized that this claim is very fact specific. As such, the Commission sets for the following recitation of the events:

On September 9, 1981 Petitioner, Alfred Anders, sustained a work related accident while employed by William A. Lewis. Said claim was adjudicated through the Commission and was ultimately heard by the Appellate Court where an award of a permanent total disability was affirmed on October 28, 1987. On October 18, 1999, Petitioner, Alfred Anders, and Respondent's attorney for William Lewis along with the Illinois Attorney General as the representative of the State of Illinois Treasurer's Office of Ex-Officio Custodian of the Rate Adjustment Fund entered into a Settlement Contract Lump Sum Petition and Order which commuted the permanent total award of \$266.67 for life into a lump sum of \$55,000.00 for both the extinguishment of weekly permanent total benefits and Petitioner's Section 8(a) medical

benefits. Said contract was approved by the Commission. Among other items, the settlement set forth the following language:

“It is further understood that this agreement is entered into with the understanding that it does not include any waiver of settlement of the Petitioner’s rights to rate adjustment fund benefits.”

After the Settlement was entered into Petitioner, Alfred Anders, continued to be paid monthly benefits from the Rate Adjustment Fund, which totaled \$968.02 on a monthly basis and which averaged out to \$242.00 on a weekly basis, The Assistant General Counsel for the Illinois Workers’ Compensation Commission sent a letter dated May 18, 2010 to Petitioner. The letter indicated that by virtue of Petitioner entered into a settlement contract the Commission has suspended his Rate Adjustment Fund payments effective immediately. Petitioner’s attorney indicated that as a result of the May 18, 2010 Commission letter Petitioner was last compensated by the Rate Adjustment Fund payment on May 14, 2010. At the April 27, 2016 Review Hearing, Petitioner entered into evidence Petitioner’s exhibit 5 as proof that Petitioner was last compensated by the Rate Adjustment Fund in the amount of \$968.02 for the monthly period of April 15, 2010 through May 14, 2010. On July 9, 2010 Petitioner filed a Petition for Section 19(k) Penalties against the Illinois Treasurer’s Office as Ex-Officio Custodian of the Rate Adjustment Fund for its unreasonable and vexatious delay in paying compensation from the Rate Adjustment Fund to Petitioner. On November 29, 2010, Petitioner died. On January 19, 2011 an amended Petition for Penalties under Section 19(k) was filed. On March 13, 2014 an Amended Application for Adjustment of Claim was filed naming Petitioner’s wife, Priscilla Anders, as the Widow of Alfred Anders.ⁱⁱ Currently before the Commission is a Motion from Priscilla Anders, widow of Alfred Anders seeking Penalties under Section 19(k) of the Act. At the April 27, 2016 Review Hearing, Petitioner’s attorney claimed that Petitioner is entitled to ⁱⁱⁱ\$6,777.05 in Rate Adjustment Fund Benefits from May 15, 2010 to November 29, 2010, the date of Petitioner’s death along with penalties under Section 19(K) of the Illinois Workers’ Compensation Act for the unreasonable and vexatious failure to pay compensation under the Rate Adjustment Fund.

Section 8(g) of the Illinois Workers’ Compensation Act titled Annual Adjustments to PTD and Death Benefits states in part:

“The within paragraph shall not apply to cases where there is disputed liability and in which a compromise lump sum settlement between the employer and the injured employee, or his dependent, as the case may be, has been duly approved by the Illinois Workers’ Compensation Commission.”

The issues before the Commission are whether Section 8(g) of the Act applied to the above captioned claim, and if so, whether the parties’ agreed not to waive Petitioner’s compensation under the Rate Adjustment Fund. In order to make this determination, the Commission must look at the specific language contained within the October 18, 1999 Settlement Contract.

The Commission has previously addressed the issue of Rate Adjustment Fund adjustments in relationship to post award commuted settlement contracts on several occasions. See *Lyons v. Henry Bireline Co.* 10 IWCC 928 (9/9/10), *Lee v. Chicago Blower* 11 IWCC 935 (9/21/11), *Wolf-Harris v. Blansett Pharmacal Co., Inc.* 12 IWCC 341 (3/29/12), *Barger, Surviving Spouse of Everett Barger, deceased v. Coulter Companies/Clinton Landfill*, 12 IWCC 1011 (9/21/12) and *Johnson v. Hanes DSD and the Treasurer's Office as Ex-Officio Custodian of the Rate Adjustment Fund* (7/9/15). The Commission adopts the analysis contained therein. As noted in *Barger, deceased v. Coulter Companies/Clinton Landfill*, 12 IWCC 1011 the Commission, moreover, acknowledges that an interpretation of the contract in relationship to the Act turned on the specific language contained within the contract.

Bearing in mind the Illinois Supreme court and the Appellate Courts' rules on statutory construction as well as the need to properly perform contractual interpretation, the Commission finds as follows in the case at bar. The Commission finds that pursuant to Section 8(g) of the Act, that there is a current dispute as to liability in the above caption case in that a permanent total award may be subject to modification at a future date and as to whether Petitioner's right to medical expenses under Section 8(a) of the Act should be extinguished. Furthermore, the Commission finds that the title of the document and boilerplate language that its purpose is to resolve all dispute about benefits, connotes that the same is a compromise lump settlement. However, as with all contractual interpretation one must look at specific language contained therein in order to ascertain the intent of the parties. In doing so in this instance the Commission notes that the parties stipulated that:

"It is further understood that this agreement is entered into with the understanding that it does not include any waiver of settlement of the Petitioner's rights to rate adjustment fund benefits."

Said waiver and agreement was made between Petitioner, Respondent and most importantly the Attorney General's Office as the representative of the State of Illinois Treasurer's Office of Ex-Officio Custodian of the Rate Adjustment Fund. The Rate Adjustment Fund compensation which averaged \$242.00 on a weekly basis constituted only slightly less than Petitioner's weekly permanent total award of \$266.67. Upon agreeing to the terms of the contract, Petitioner agreed to not give up a significant source of his income and he detrimentally relied upon the representation in the contract that the Rate Adjustment Fund benefits were not waived. Thus, the Commission finds that by virtue of the parties' agreement not to waive the Rate Adjustment Fund adjustment and Petitioner's detrimental reliance on the same, this contract constitutes a settlement but it does not constitute a compromise lump sum settlement in a true sense of the word. As such the Commission finds that Petitioner is entitled to \$6,777.05 in Rate Adjustment Fund adjustments from May 15, 2010 to November 29, 2010, the date of Petitioner's death.

In terms of whether Petitioner is entitled to Section 19(k) penalties, the Commission finds that penalties as contemplated by the Act are assessed against the employer to address the employer's deliberate and vexatious conduct in refusing to pay a Petitioner compensation that is due and owing. The Commission is not the employer in this matter. Additionally the adjustments under the Rate Adjustment Fund do not fall under the purview of Sections 8(e) or 8(f) of the Act. Thus, there is no statutory basis for the Commission to assess penalties under Section 19(k) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner is entitled to \$6,777.05 in adjustments under the Rate Adjustment Fund from May 15, 2010 to November 29, 2010, the date of Petitioner's death.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is not entitled to penalties under Section 19(k) of the Act.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to file for Review in Circuit Court.

DATED:

AUG 11 2016

R: 4/27/16

43



Maria Basurto



David L. Gore



Stephen Mathis

ⁱ The Commission notes that Petitioner only filed a Petition under Section 19(k) of the Act and did not seek an adjustment under the Rate Adjustment Fund. The Commission is cognizant of the fact in order to entertain a request for Penalties there must be an underlying compensation due and owing. At the outset of the April 27, 2016 Review Hearing and in addition to the written Petition under Section 19(k), Petitioner's attorney made an oral motion to award an adjustment to Petitioner under the Rate Adjustment Fund. While Petitioner should have sought such a remedy in its written Petition, the Commission will acknowledge through necessity the need for Petitioner's attorney's oral Motion and will incorporate the same in the above Order.

ⁱⁱ The Commission finds that it has proper jurisdiction in this case over the above captioned Petitioner as a survivor of the decedent and it need not address whether the claim survived the death of Petitioner as the remedy sought was during Mr. Alfred Anders' lifetime.

ⁱⁱⁱ During the April 27, 2014 Review Hearing Petitioner placed into evidence Petitioner's PX4 which indicates Petitioner was overpaid .12 by the rate adjustment fund for FY 2008, was due \$1.20 for FY2009, was due \$1,935.92 for FY2010 (7/15/09-7/14/10) and \$4,840.05 for FY2011 for 7/15/10-11/29/10 for a total of \$6,777.05.