

ARKANSAS SENATE
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of Senate Bill No. 439

"AN ACT TO AMEND ARKANSAS CODE 11-9-715 TO REVISE THE AMOUNT OF
ATTORNEY'S FEES TO BE AWARDED IN WORKERS' COMPENSATION CASES."

Amendment No. 1 to Senate Bill No. 439.

Amend Senate Bill No. 439 as originally introduced:

Delete SECTION 1 in its entirety and substitute the following:

SECTION 1. Arkansas Code 11-9-715 is amended to read as follows:

11-9-715. Fees for legal services.

(a)(1)(A) Fees for legal services rendered in respect of a claim shall not be valid unless approved by the Workers' Compensation Commission.

(B) The fees shall not exceed thirty percent (30%) of the first one thousand dollars (\$1,000) of compensation, or part thereof, twenty percent (20%) of all sums in excess of one thousand dollars (\$1,000), ~~but less than three thousand dollars (\$3,000) of compensation, and ten percent (10%) of all sums in excess of three thousand dollars (\$3,000) of compensation.~~

(2)(A) Whenever the commission finds that a claim against the Treasurer of State, as custodian of the Second Injury Trust Fund, has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid from the fund, in addition to compensation awarded, and the fees shall be allowed only on the amount of compensation controverted and awarded from the fund.

(B)(i) In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half (1/2) by the employer or carrier in addition to compensation awarded; and one-half (1/2) by the injured employee or dependents of a deceased employee out of compensation payable to them. However, with respect to any controverted medical benefits, the employer or carrier shall be responsible for the entire fee owed on the controverted medical benefits.

(ii) The fees shall be allowed only on the amount of compensation controverted and awarded.

(iii) However, the commission shall not find a claim has been controverted if the claimant or his representative has withheld from the respondent during the period of time allotted for the respondent to determine its position any medical information in his possession which substantiates the claim.

(C) Whenever the commission finds a claim has not been

controverted but further finds that bona fide legal services have been rendered in respect to the claim, then the commission shall direct the payment of the fees out of the compensation awarded.

(3) In any case where attorney's fees are allowed by the commission, the limitations expressed in the first sentence herein shall apply.

(4) In determining the amount of fees, the commission shall take into consideration the nature, length, and complexity of the services performed, and the benefits resulting to the compensation beneficiaries.

(b)(1) In addition to the fees provided in subdivision (a)(1) of this section, if the claimant prevails on appeal, the attorney for the claimant shall be entitled to an additional fee at the full commission and appellate court levels, the additional fee to be paid equally by the employer or carrier and by the injured employee or dependents of a deceased employee, as provided above and set by the commission or appellate court.

(2) The maximum fees allowable pursuant to this subsection shall be the sum of ~~two hundred fifty dollars (\$250)~~ seven hundred fifty dollars (\$750) on appeals to the full Commission from a decision of the administrative law judge, and the sum of ~~five hundred dollars (\$500)~~ one thousand five hundred dollars (\$1,500) on appeals to the Arkansas Court of Appeals or Supreme Court from a decision of the commission.

(3) In determining the amount of fees, the court shall take into consideration the nature, length, and complexity of the services performed, and the benefits resulting to the compensation beneficiary.

(c)(1) The fee for legal services rendered by the claimant's attorney in connection with a change of physician requested by the injured employee, controverted by the employer or carrier, and awarded by the commission shall be two hundred dollars (\$200).

(2) No additional fee shall be payable with respect to uncontroverted charges incurred in connection with treatment by the new physician.

(d)(1) No fees for legal services rendered by the claimant's attorney with respect to the preliminary conference procedure shall be awarded by the commission.

(2) However, the claimant's attorney or other representative may charge a reasonable fee to the claimant for representation in connection with the conference.

(3) Unless compensability of a claim is controverted by the employer or carrier, fees for legal services by the claimant's attorney with respect to disability for loss of wage earning capacity shall be payable only for amounts awarded at a contested hearing which exceed the amount, if any, which the employer or carrier agreed in writing to accept at the preliminary conference.

(e) Fees for legal services rendered by the claimant's attorney with respect to medical expenses of a repeated and continuing course of treatment controverted by the employer or carrier shall be payable only in connection with such controverted expenses incurred during a two-year period beginning with the first date on which such expenses were incurred.

(f) The amendments regarding attorney's fees contained in this section shall be effective with respect to benefits payable in connection with disability or death due to injuries occurring on or after July 1, 1986. "

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Simes

DF/CDS

CDS236

Secretary