

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CLARENCE THOMAS

APPELLANT,

v.

**TREASURER OF THE STATE OF
MISSOURI - CUSTODIAN OF THE
SECOND INJURY FUND**

RESPONDENT.

DOCKET NUMBER WD72432

DATE: December 14, 2010

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

Attorneys:

Christopher P. Sweeny, Frank D. Eppright and Elaine M. Eppright, Kansas City, MO, for appellant.

Kimberley Cox Fournier, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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**TREASURER OF THE STATE OF
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Labor and Industrial Relations Commission

Before Division Three Judges: Alok Ahuja, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

This case involves a claim for workers' compensation by Clarence Thomas. On November 16, 2009, an administrative law judge issued an award calculating Thomas's permanent partial disability at thirty-five percent. On November 25, 2009, the administrative law judge entered an amended award, calculating Thomas's disability at twenty-three percent. Thomas filed an application for review within twenty days of the amended award, which the Commission subsequently dismissed for being untimely as the application was filed more than twenty days after the original award. The Commission found that pursuant to section 287.610.6 the administrative law judge had only the authority to correct clerical errors following entry of the original award, and retained no authority to substantively modify the award.

Thomas appeals from the Commission's decision dismissing his application for review.

REVERSED AND REMANDED.

Division Three holds:

(1) Section 287.610.6 does not limit the authority of a workers' compensation administrative law judge with respect to asserting an award to the correction of clerical errors.

(2) A plain language reading of section 287.610.6 makes clear that the legislature extends to administrative law judges the authority to make substantive changes to an award, and that this authority is not extinguished until the lapse of twenty days following entry of an award or until the Commission's exclusive authority is triggered by an application for review being filed pursuant to either section 287.470 or section 287.480.

(3) No application for review was filed pursuant to section 287.470 or section 287.480 prior to the administrative law judge amending the award. The Commission's authority had not been triggered. Therefore, the administrative law judge retained the authority to modify the award as twenty days had not passed since the issuance of the award.

Opinion by: Cynthia L. Martin, Judge

December 14, 2010

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