MISSOURI COURT OF APPEALS
WESTERN DISTRICT

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

APPELLANT,

v.

JIMMY MICKELBERRY

RESPONDENT.

DOCKET NUMBER WD82997

DATE: April 14, 2020

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Two: Cynthia L. Martin, Presiding Judge, Thomas H. Newton, Judge and Gary D. Witt, Judge

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Attorneys:

Eric W. Lowe, Kansas City, MO, for appellant.

May Mirfasihi, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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TREASURER OF THE STATE OF MISSOURI - CUSTODIAN OF THE SECOND INJURY FUND, APPELLANT,
v.
JIMMY MICKELBERRY, RESPONDENT.

WD82997 Labor and Industrial Relations Commission

Before Division Two Judges: Cynthia L. Martin, Presiding Judge, Thomas H. Newton, Judge, and Gary D. Witt, Judge

The Treasurer of the State of Missouri as Custodian of the Second Injury Fund ("Fund") appeals the final award of the Labor and Industrial Relations Commission ("Commission") finding that Jimmy Mickelberry ("Mickelberry") was permanently and totally disabled in part due to preexisting conditions, triggering Fund liability. The Fund raises three allegations of error on appeal. Mickelberry filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction, based on an allegation of an improper application for review filed by the Fund with the Commission. This Court need not address the merits of the Fund's allegations of error because the Commission exceeded its statutory authority when it considered the Fund's appeal from the Administrative Law Judge's ("ALJ") award.

REVERSED AND SET ASIDE THE COMMISSON'S AWARD.

Division Two holds:

(1) This Court has subject matter jurisdiction to entertain the Fund's appeal despite a defective application for review because our jurisdiction to review a final award of the Commission is derived from Article V, section 18 of the Missouri Constitution.

(2) As the prevailing party on the Fund's appeal from the ALJ Award to the Commission, Mickelberry was not obligated to file an appeal to raise the claim that the Commission had no statutory authority to entertain the Fund's appeal from the ALJ Award.

(3) The Fund's application for review was defective because it failed to meet the requirements of 8 CSR 20-3.030(3)(A) because it incorrectly identified the date the ALJ Award was entered, the Fund's allegations of error referenced the facts of an entirely unrelated case, and raised no allegations of error as to Mickelberry's case. There was no valid application for review and the Commission erred in attempting to remediate the defective application merely by giving notice of the additional issues the Commission sought to review.

The ALJ Award was never properly challenged by the Fund. We reverse and set aside the Commission's final award and deem the ALJ Award as the final award and judgment on Mickelberry's Amended Claim for Compensation.

Opinion by: Gary D. Witt, Judge April 14, 2020

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