



In the Missouri Court of Appeals Eastern District

DIVISION FOUR

JOHN D. MATTHEWS,	)	No. ED109168
	)	
Appellant,	)	Appeal from the Labor and
	)	Industrial Relations Commission
vs.	)	
	)	
TREASURER OF MISSOURI AS	)	
CUSTODIAN OF THE SECOND	)	
INJURY FUND,	)	
	)	
Respondent.	)	FILED: April 6, 2021

Lisa Matthews (“Appellant”) appeals from the Missouri Department of Labor and Industrial Relations Commission’s (the “Commission”) dismissal of her motion to be substituted as a party in the workers’ compensation case of her late husband, John D. Matthews (“Employee”). In her motion, Appellant asserted she was Employee’s dependent and was therefore entitled to receive permanent total disability benefits that had been awarded to him from the Second Injury Fund (the “Fund”). The Commission dismissed Appellant’s motion for lack of jurisdiction because the final award in Employee’s case did not establish that Appellant was his dependent at the time of his work-related injury. We affirm.

Factual and Procedural Background

Employee sustained a work-related injury on March 1, 2003. He settled with his employer and later pursued a claim against the Fund for permanent total disability benefits. On April 27,

2015, following a hearing, the Administrative Law Judge (“ALJ”) awarded Employee permanent total disability benefits. The Fund appealed to the Commission, which affirmed the award on January 20, 2016. Although the award referenced Employee’s “wife” and stated that he “has been married for 31 years,” it did not contain any findings regarding dependents of Employee or the applicability of benefits pursuant to *Schoemehl v. Treasurer of the State of Mo.*, 217 S.W.3d 900 (Mo. banc 2007). Because no party appealed the January 20, 2016 award of the Commission, it became final 30 days later on February 19, 2016. See Section 287.495.¹

Pursuant to the award, the Fund paid Employee weekly permanent total disability benefits until his death on March 11, 2020, which was not related to his injury. Appellant subsequently filed with the Commission a motion for substitution of parties in which she sought to receive Employee’s permanent total disability benefits as his surviving dependent pursuant to *Schoemehl*. In her motion, Appellant asserted that she was Employee’s spouse at the time of his injury. The Commission dismissed the motion for lack of jurisdiction, concluding it had no statutory authority to continue the benefits because the ALJ’s award did not contain a finding that Appellant was Employee’s dependent on the date of his injury. This appeal follows.

Standard of Review

In a workers’ compensation case, we will not disturb the Commission’s decision unless it acted without or in excess of its powers, the award was procured by fraud, the facts found by the Commission do not support the award, or there was not sufficient competent evidence in the record to warrant the making of the award. Section 287.495.1. “On review, this Court examines the record as a whole to determine if the award is supported by sufficient competent and substantial evidence, or whether the award is contrary to the overwhelming weight of the evidence.” *Edwards*

¹ All statutory references are to RSMo (2016).

v. Treasurer of State, 529 S.W.3d 7, 10 (Mo. App. E.D. 2017). “While we review questions of law *de novo*, we defer to the Commission on issues of fact.” *Id.*

Discussion

Appellant argues the Commission erred in dismissing her motion for substitution of parties because she presented evidence that she was Employee’s dependent on the date of his injury, which entitled her to a continuation of his permanent total disability benefits pursuant to *Schoemehl*. We disagree.

In *Schoemehl*, the Supreme Court of Missouri held that an employee’s right to permanent total disability benefits survives to his or her dependents upon the employee’s death from causes unrelated to the workplace injury. 217 S.W.3d at 901-03. The General Assembly abrogated *Schoemehl* by amending Section 287.230 effective June 26, 2008. *See Lawrence v. Treasurer of State – Custodian of Second Injury Fund*, 609 S.W.3d 782, 784 (Mo. App. W.D. 2020). “While the holding in *Schoemehl* no longer applies to cases where the amended version of Section 287.230 applies, the amendment is not retroactive.” *Edwards*, 529 S.W.3d at 10. “Recovery under *Schoemehl* is limited to situations where the injured employee’s case was pending before the Division [of Workers’ Compensation], the Commission, or an appellate court between January 9, 2007, when the Supreme Court issued *Schoemehl*, and June 26, 2008, the effective date of the legislation abrogating *Schoemehl*.” *Id.*

Here, the parties agree Employee’s claim was pending during the “*Schoemehl* window.” *See id.* In analyzing a claim for *Schoemehl* benefits, however, we must first consider whether the issue has been preserved. “[T]he issue of a dependent’s contingent right to *Schoemehl* benefits for future determination is preserved if the dependency at the time of the injury is established as a matter of law in the final award.” *Id.* at 11. “Once the issue is preserved, the Commission has

the authority to further delineate the award under Section 287.470 after the employee's death as a 'change in condition.'" *Id.* But if the final award does not make findings establishing the dependents, the Commission does not have the authority to later disturb the finality of the award by modifying it to make dependency findings that the Commission did not include in the final award. *Lawrence*, 609 S.W.3d at 784-85; *Carter v. Treasurer of the State of Mo. – Custodian of the Second Injury Fund*, 506 S.W.3d 368, 372 (Mo. App. W.D. 2016).

The mere mention in the final award that the employee is married is insufficient to establish dependency at the time of the injury. For example, in *Edwards*, the court held the final award's references to the employee's "wife" did not constitute a finding that the claimant was his wife or his dependent at the time of his injury. 529 S.W.3d at 9, 12; *see also Lawrence*, 609 S.W.3d at 785 (holding that the mere reference to the employee's "wife" and "daughters" was insufficient to establish dependency).

Here, Appellant acknowledges the final award did not identify her by name as Employee's dependent. She asserts, however, the final award nevertheless established dependency because it stated Employee "has been married for 31 years"—a period of time that included the date of his injury. The court rejected a similar argument in *Estate of Dunkin v. Treasurer of State – Custodian of Second Injury Fund*, 516 S.W.3d 863, 866-67 (Mo. App. W.D. 2017), where the court held the mere mention of the length of time an employee was married was insufficient to support an award of *Schoemehl* benefits. In that case, the final award stated the employee "had been married for almost 42 years" but did not include the spouse's name or expressly state she was a dependent at the time of the injury. *Id.* Appellant attempts to distinguish *Dunkin* by stressing it involved a final award that described the marriage in the past tense while the final award at issue here stated that Employee "*has* been married for 31 years." (emphasis added). The *Dunkin* court, however, held

that even if it assumed the sentence describing the marriage “could be read to express that [the employee] was married at the time of injury, it [did] not establish that he was married [to the claimant] at that time” because the final award never mentioned her by name. *Id.* at 867. Similarly, here, although the final award included language that Employee was married during a period of time that included the date of his injury, it did not identify Appellant as his spouse and therefore did not establish she was his dependent on that date.

Appellant argues the Commission should have looked beyond the final award to the “whole record,” which includes deposition testimony that Employee was married to Appellant at the time of the injury. The court rejected the same argument in *Lawrence*, where the transcript contained references to the employee’s wife and daughters, noting that “it is irrelevant that an individual’s status as a dependent of a claimant *could have* been established in a Final Award or that such a finding *would have* been supported by the evidence adduced at the hearing before the ALJ.” 609 S.W.3d at 785 (emphasis in original). The court stressed that “dependency at the time of the injury must be ‘established as a matter of law **in the final award.**’” *Id.* at 786 (emphasis in original) (quoting *Edwards*, 529 S.W.3d at 11).

Here, because the final award did not establish as a matter of law that Appellant was Employee’s dependent at the time of his injury, the Commission lacked jurisdiction to grant the relief sought and properly dismissed her motion to substitute parties. *See Dunkin*, 516 S.W.3d at 867.

Conclusion

For the foregoing reasons, we affirm the decision of the Commission.

A handwritten signature in blue ink, appearing to read "M. Gardner", is positioned above a horizontal line.

MICHAEL E. GARDNER, Judge

Gary M. Gaertner, Jr., P.J., concurs.

Philip M. Hess, J., concurs.