

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

PHILLIP CARTER, DEC.,

Appellant,

v.

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

Respondent.

DOCKET NUMBER WD77747 Consolidated with WD78840

Date: October 25, 2016

Appeal from:

Labor and Industrial Relations Commission Circuit Court

Appellate Judges:

Division Two: Lisa White Hardwick, Presiding Judge, Karen King Mitchell and Anthony Rex Gabbert, Judges

Attorneys:

Truman E. Allen and Benjamin B. Nelson, Columbia, MO for appellant.

Kimberley C. Fournier, Jason M. Lloyd, Kansas City, and Cara L. Harris, Springfield, MO for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

PHILLIP CARTER, DEC.

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Labor and Industrial Relations Commission

Before Division Two: Lisa White Hardwick, Presiding Judge, Karen King Mitchell and
Anthony Rex Gabbert, Judges

Edith Joanne Carter appeals the decision of the Labor and Industrial Relations Commission ("Commission") dismissing her motion to substitute her as a party for her deceased husband, Phillip Carter, in his workers' compensation case and to order the Second Injury Fund ("Fund") to pay his permanent total disability benefits to her. Carter contends the Commission erred in concluding that it had no statutory authority to order the continuation of Phillip's benefits to her after his death. Additionally, she argues that the Commission's decision to deny her Phillip's benefits violated her right to due process of law.

AFFIRMED.

Division Two holds:

(1) The Commission did not err in in dismissing Carter's motion to substitute her as a party and to reinstate Phillip's permanent total disability benefits. Because the final award in Phillip's workers' compensation case did not find that Carter was Phillip's dependent at the time of his injury, the Commission could not later consider whether Carter was entitled to benefits under *Schoemehl v. Treasurer of Missouri*, 217 S.W.3d 900 (Mo. banc 2007).

(2) The Commission's decision did not violate Carter's right to due process because a procedure for obtaining *Schoemehl* benefits was available to her.

Opinion by: Lisa White Hardwick, Judge

October 25, 2016

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