



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE ex rel. INDUSTRIAL COMMISSION
v. TOMMY WORD, dba PACIFIC MECHANICAL SERVICE
CV-09-0174-PR
221 Ariz. 283, 211 P.3d 1267 (App. 2009)**

PARTIES AND COUNSEL:

Petitioner: The Industrial Commission of Arizona, represented by Michael P. Primiano.

Respondent: Tommy Word, dba Pacific Mechanical Service, represented by Philip R. Wooten.

FACTS:

Robert Ruehrmund was injured while working for Word. In April 1992, the Industrial Commission's administrative law judge issued an award for a compensable workers' compensation claim. Because Word did not carry workers' compensation insurance, Ruehrmund received benefits through the Industrial Commission's Special Fund.

In December 1993, the Commission issued a document captioned "Continuing Award," listing payments the Special Fund had made on Ruehrmund's claim and notifying Word, "[p]ursuant to ARS Section 23-907(C) [now § 23-907(E)], of [his] liability to the Special Fund" for medical and compensation benefits and penalties, totaling \$19,727.49. The award then stated:

The Industrial Commission of Arizona shall file a judgment for the amounts listed together with attorney's fees, interest, and costs to the extent permitted by law, with the clerk of the superior court and shall record such judgment as a lien with the county recorder. Be advised that this award is made only for the purpose of notifying the non-insured employer of its liability to the Special Fund.

The "Continuing Award" advised Word of his right to protest the calculations within ten days. *See* A.R.S. § 23-947(A). Word did not protest, and the award became final.

The Commission thereafter issued several "Supplemental Continuing Awards," identical to the previous award except for the title, dates, signature, and dollar amounts. A May 1994 "award" listed additional benefit payments the Special Fund had made, which, added to the balance forward, amounted to \$29,492.97. A March 1998 "award" in the same format reflected a total due of \$83,381.49.

The Commission made its last payment to Ruehrmund in November 1998. Almost two years later, in October 2000, the Commission issued a “Final Award,” listing additional benefit payments, for a total of \$84,325.28. The Commission filed this “Final Award” with the clerk of the superior court and recorded it with the county recorder in July 2001. It did not file or record any of the earlier “awards.” In April 2007, the Commission obtained and served several writs of garnishment in an attempt to collect from Word on the “Final Award.”

Word filed a motion in superior court for relief from judgment pursuant to Rule 60(c), Ariz. R. Civ. P., arguing the Commission had no valid judgment to enforce because the eight-year limitations period set forth in A.R.S. § 23-907(E) had lapsed. The superior court denied the motion, finding the limitations period began to run when the “Final Award” was issued on October 11, 2000. Word appealed.

The court of appeals reversed, finding the language of A.R.S. § 23-907(E) to be clear and unambiguous. The statute requires the Commission to notify the uninsured employer “periodically” of the amount of his liability to the Special Fund and to include in those notices certain statutory penalties. Additionally, it requires the Commission to file “the award” with the superior court clerk for it to become “a lien for eight years from the date of the award upon the property of the employer,” upon which it could execute “within eight years in the same manner and with like effect as if the award were a judgment of the superior court.” Finally, payments made from the Special Fund pursuant to “the award” “shall act as a judgment against the employer.”

The court found the last two requirements problematic in this case. The Commission conceded that, although the original award was issued in April 1992, the only document it ever filed with the superior court clerk was the “Final Award,” which it filed in 2001. The court concluded that, notwithstanding the document’s caption, it was not an “award” as that term is defined in A.R.S. § 23-901(1) (“the finding or decision of an administrative law judge or the commission as to the amount of compensation or benefit due an injured employee”). “Awards” adjudicate rights of injured workers. The document in question did not do that; rather, it notified the employer, as § 23-907(E) requires the Commission to do “periodically,” of his liability to the Special Fund for payments made pursuant to an existing award. Significantly, Word could only request a hearing on the so-called “awards” if he disagreed with “the calculations” set forth in the notices. By contrast, Word could contest not merely the mathematical accuracy of the original award, but also the underlying substantive decision.

Applying the clear language of the statute, the court determined the Commission must file “the award,” which then acts as a lien on the employer’s property. Thereafter, as benefit payments are made, the amounts paid can be recouped as a judgment against the employer. If it chooses to do so, the Commission may begin enforcement proceedings against an employer immediately upon paying benefits on a claim. Prompt collection action is consistent with the legislative history of A.R.S. § 23-907. A contrary interpretation of § 23-907(E) would allow the Commission to wait years or even decades before issuing a final “award,” placing the eight year limitations period solely within the control of the Commission. If the legislature intended such a result, it will presumably amend the statute to so reflect.

Because the Commission did not file “the award” to perfect its judgment rights, it has no valid judgment. The superior court should have granted Word’s Rule 60(c) motion. The court also awarded attorneys’ fees to Word pursuant to A.R.S. § 12-348.

ISSUES:

1. Was the October 11, 2000 Final Award a valid judgment upon which a writ of garnishment could be grounded, and if valid, in what amount?

2. Are the Continuing, Supplemental and Final Awards in this matter isolated judgments, each subject to separate renewal, or is the debt in the older awards carried forward and republished in the newest award, thus requiring renewal of only the Final Award?

RELEVANT STATUTE:

A.R.S. § 23-907(E) provides:

The employer shall be notified of the employer’s liability to the special fund periodically and this notice shall include a ten per cent [sic] penalty of the amount expended by the special fund or a penalty of one thousand dollars, whichever is greater, plus interest on the amount expended and the penalty pursuant to § 44-1201. The payments made from the special fund pursuant to the award plus the penalty shall act as a judgment against the employer. The commission shall file the award in the officer of the clerk of the superior court in any county in the state and such award shall be entered in the civil order book and judgment docket and when so filed and entered shall be a lien for eight years from the date of the award upon the property of the employer located in the county. Execution may issue thereon within eight years in the same manner and with like effect as if the award were a judgment of the superior court.

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