

1996

Verna Caporoz, Roxsanne Clastimado, Barney
Caporoz v. Guillermo Rodriguez, Margaret
Rodriguez, Willie Roriguez, Tim Fraga : Brief of
Appellant

Utah Court of Appeals

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David W. Parker; Attorney for Petitioners.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 960760-CA

IN THE UTAH COURT OF APPEALS

VERNA CAPOROZ (sister) and)
ROXSANNE CLASTIMADO (half-sister) of)
BARNEY CAPOROZ, Deceased)
Petitioners/Appellants)
v.)
GUILLERMO RODRIGUEZ and/or)
MARGARET RODRIGUEZ and/or WILLIE)
RODRIGUEZ and/or TIM FRAGA dba)
HANDYMAN WILLIE (Uninsured) and)
UNINSURED EMPLOYERS FUND)
Respondents/Appellees)

Case No: 960760-CA

Priority No.: 7

BRIEF OF APPELLANTS ON THEIR PETITION FOR REVIEW

Sharon J. Eble
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FILED

MAR 27 1997

COURT OF APPEALS

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List of Cases

- Adams v. Board of Review, 821 P.2d 1 (1991)
- Farnsworth v. Industrial Commission, 534 P.2d 897 (Utah 1975)
- Heaton v. Second Injury Fund, 796 P.2d 676 (1990)
- Heiselt Const. Co. v. Industrial Commission, 197 P. 589 (1921)
- IHC v. Board of Review, 839 P.2d 841 (1992)
- J & W Janitorial Co. v. Industrial Commission, 661 P.2d 949 (1983)
- Kaiser Steel Corp. v. Monfredi, 631 P.2d 888 (1981)
- LDS Hospital v. Industrial Commission of Utah 901 P.2d 1164 (1987)
- Long v. Western States Refining Co., 384 P.2d 1015 (1963)
- M & K v. Industrial Commission, 189 P.2d at 134 (1949)
- Maryland Cas. Co. v. Industrial Commission, 364 P.2d 1020 (1961)
- McPhie v. Industrial Commission, 567 P.2d 153 (1977)
- Olsen v. Industrial Commission, 797 P.2d 1098 (1990)

Ortega v. Salt Lake Wet Wash Laundry, 156 P.2d 885 (1945)

Parker v. Industrial Commission, P.2d 278 (1935)

Price River Coal Co v. Industrial Commission, 731 P.2d 1079 (1986)

Roller Coaster Co. v. Industrial Commission, 189 P.2d 709 (1948)

Sizemore v. Industrial Commission of Utah, 288 P.2d 788 (1955)

Walls v. Industrial Commission, 857 P.2d 974 (1993)

Rules and Statutes

Utah Code Ann. Section 35-1-86

Utah Code Ann. Section 35-1-71

Utah Code Ann. Section 35-1-68

Rules of the Industrial Commission Rule 568-1-12(1)

Rules of the Industrial Commission Rule 568-1-4(M)

Other Authorities

Larsen's Section 63

Larsen Section 63.10

STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction in this matter pursuant to Utah Code Ann. Section 35-1-86.

STATEMENT OF ISSUES

1. Whether the Industrial Commission improperly determined that Petitioners were not dependents under Utah Code Ann. Section 35-1-71.
2. Whether or not the Industrial Commission properly applied the law in determining burden

of proof for establishing dependency.

3. Whether or not the Industrial Commission committed error by failing to construe the workers' compensation statute liberally in favor of the Petitioners.
4. Whether the Industrial Commission's decision and order are supported by adequate findings of fact and conclusions of law.
5. Whether the Petitioners' due process rights have been denied by virtue of the Industrial Commission and Administrative Law Judge's Findings of Fact or if they are arbitrarily capricious or wholly without cause.
6. Whether Temporary Total Disability Compensation had accrued and should have been awarded.

STATEMENT OF CASE

Nature of the Case

This is an appeal from a final order of the Industrial Commission. The case arose from an industrial accident occurring on May 17, 1994 when Barney Caporoz was injured while in the course and scope of his employment with Uninsured Handyman Willie. Mr. Caporoz died on December 17, 1994 after being in a coma for six months. The Petitioners are sister and half-sister to the Decedent who resided with Decedent at the time of the injury. Petitioners are claiming they are entitled to workers compensation benefits by virtue of their dependency upon the support and maintenance of the Decedent.

Course of the Proceedings

1. On October 4, 1994, Petitioner Verna Caporoz filed a Protection of Rights claim for and on behalf of Barney Caporoz.
2. On May 5, 1995, Petitioner Verna Caporoz filed a claim for dependent benefits and burial expenses with the Industrial Commission.

3. A hearing was held before Judge Donald L. George of the Industrial Commission.
4. Judge Donald L. George signed a prepared Order on April 3, 1996.
5. A Motion for Review was timely filed on May 3, 1996.

Disposition at the Industrial Commission

The Industrial Commission denied the Motion for Review on October 30, 1996 determining that Petitioners were not entitled to Dependent benefits.

BACKGROUND FACTS

1. On May 17, 1994, Barney Caporoz was working for Handy Man Willie, an Uninsured Employer when he was injured by accident arising out of and in the course of his employment. See Judge George Findings of Fact, Paragraph 1, page 2, Industrial Commission Findings of Fact, page 1.
2. Barney Caporoz was in a coma until December 17, 1994 when he died from the May 17, 1994 accident. See Medical Record Exhibit and Industrial Commission Findings of Fact page 1.
3. At the time of the accident, Barney Caporoz resided with his sister Verna Caporoz and half-sister, Roxsanne Clastimodo. See Judge George Findings of Fact Paragraph 4, page 3 and Industrial Commission Findings of Fact page 2.
4. On October 4, 1994, Applicant Verna Caporoz filed a Claim for Protection of Rights as it deals with her deceased brother, Barney Caporoz. She indicated that at the time of the injury, her brother was in a coma as a result of an industrial injury.
5. On May 5, 1995, Applicant filed a Claim for Dependents' Benefits and/or burial benefits.

See Industrial Commission Findings of Fact page 3,

6. In 1988, the Petitioners moved from Hawaii to Utah to Plain City. Three years later, in 1992, the Deceased moved into a rental home of his sisters, the Applicants. See Judge George Findings of Fact, Paragraph 4, page 3, Industrial Commission Findings of Fact, page 2.
7. In 1992, the Petitioners were paying rent of \$275.00 per month. The Landlord increased the rent to \$400.00 per month and the sisters needed assistance and support to pay the rent and other expenses. See Findings of Fact by Judge Donald L. George Paragraph 5, page 3, Industrial Commission Findings of Fact, page 2.
8. The sisters testified they could not maintain the rent in said home without the assistance of their brother. Had the Deceased not moved in with his sisters, they could not afford said home. See Judge George Findings of Fact, paragraph 8, page 3.
9. After Barney Caporoz moved in, he purchased the family two additional vehicles, living room furniture, and other furniture. See Judge George Findings of Fact, paragraphs 10, 11, 12, page 3 and Industrial Commission Findings of Fact, page 2.
10. He further increased the lifestyle of the Petitioners by paying for all recreation, taking the Petitioners to Lagoon and Wendover. See Judge George Findings of Fact, Paragraph 13, page 4 and Industrial Commission Findings of Fact, page 2.
11. The Deceased also lessened expenses by performing all of the maintenance on the home and on the vehicles. See Judge George Findings of Fact, Paragraph 14, page 4 and Industrial Commission Findings of Fact page 2.
12. He further contributed to the Petitioners support and maintenance by purchasing food.

See Judge George Findings of Fact Paragraph 14, page 4 and Industrial Commission Findings of Fact, page 2.

13. The Deceased provided \$400.00 per month to pay for bills and paid \$150.00 toward the rent. See Judge George Findings of Fact, Paragraph 14, page 4 and Industrial Commission Findings of Fact page 2.
14. The Deceased also increased the Petitioners lifestyle by entering into a contract for cable TV. See Judge George Findings of Fact, Paragraph 22, page 4 and Industrial Commission Findings of Fact page 2.
15. The Deceased helped pay for utilities including the phone. See Judge George Findings of Fact, Paragraph 16, page 4, Industrial Commission Findings of Fact, page 2.
16. The applicants testified that the Deceased was the man of the family. Hearing Transcript pages 14, 22.
17. The parties held a joint bank account. See Hearing Transcript page 45, 46 and Industrial Commission Findings of Fact page 3.
18. The Applicants both testified they enjoyed the relationship and arrangement. They had hope to continue this relationship and arrangement for considerable time. See testimony of Verna Caporoz.
19. Following the demise of the Deceased, the applicants could not maintain their lifestyle and standard of living. The Petitioners were forced to sell the couches, vehicles, loveseat, lounge chair, waterbed, TV and Roxsanne's bed. Furthermore, they could not afford cable nor go on any vacations. The telephone was shut off. See Judge George Findings of Fact Paragraphs 22 and 23, pages 4 and 5, Industrial Commission Findings of Fact page 3.

SUMMARY OF ARGUMENT

The Workers Compensation Act of Utah intends that family members of a deceased worker receive benefits if the individual family member can show that dependency existed between the deceased and the family member. Dependency is based upon a question of fact and the underlying circumstances, and is not limited to an absolute dollar standard. Should dependency exist, Utah Law provides that accrued benefits are payable to the dependent or the estate, and the accrued benefits do not terminate due to the passing of the deceased.

The Applicant's in this case are dependents. In reviewing the Findings of Fact one can only come to the conclusion that dependency existed and any benefits that had accrued from the date of the accident to the date of death, are due and payable to the dependents in accordance to Utah Law.

20. The applicants have not eaten as well as when the Deceased was alive. See Hearing Transcript pages 24 and 48.
21. Both Applicants testified that they depended financially upon the Deceased. See Judge George Findings of Fact Paragraph 8, page 3.

ARGUMENT

The Petitioners fall within the Statutory meaning of Dependents.

The Workers Compensation Act of Utah intended to provide benefits to family of a Deceased employee. The Applicants, both of whom are related to the Deceased, fall squarely in Utah Code Ann. §35-1-71 in that Verna is a sister to the Deceased. In Utah Code Ann. Section 35-1-71 it specifically states: “ No person shall be considered as a dependent unless he or she is a *member of the family of the Deceased employee*, or bears the relation of husband or wife, lineal descendant, ancestor, or brother or *sister*. (Emphasis added) Roxsanne is a half-sister and is specifically included in the statute. Half brothers and *half sisters* shall be included in the words "brother or sister" as above used. (Emphasis added)

Petitioners have the burden to prove that they are dependents. In Larsen's Section 63 it states:

“Dependency in fact must be established in order to qualify for death benefits in all cases except those involving a conclusive presumption of dependency. Proof of actual dependency does not require a showing that the claimant relied on the deceased for the bare necessities of life and without that contribution would have been reduced to destitution; it is sufficient to show that the deceased’s contributions were looked to by claimant for the maintenance of claimant’s accustomed standard of living. Hence a claimant may be dependent although receiving other income from claimant’s own work, from property, or from other persons on whom claimant is also dependent. Usually, actual contribution to

claimant's support is enough to establish dependency without evidence of legal obligation to support.

In LDS Hospital v. Industrial Commission of Utah 901 P.2d 1164 (1987), the court defined

"dependency". It states:

"dependency within the meaning of our workers' compensation statutes does not mean absolute dependency for the necessities of life, but instead it means a need for and reliance on the worker's income to support and maintain the alleged dependent in accordance with his accustomed station in life."

Larsen further indicates that "no absolute dollar standard by which to test either the magnitude of claimant's need or the magnitude of decedent's help in meeting that need. In fact there is Utah case law that shows a determination of dependency when the applicant was only receiving between \$1.00 to \$3.00 per month from the deceased.

In Sizemore v. Industrial Commission of Utah, 288 P.2d 788 (1955), the court has suggested a 2-part test in deciding dependency. The Sizemore court has indicated the following:

(1)(a) Dependency is primarily a question of fact, except in those cases covered by statutory presumption. While it is difficult to fashion a general definition to cover all situations which might constitute dependency, it should appear that at the time of the injury:

(1) There existed some family or other social relationship giving rise to a legal or moral obligation to support; and

(2) One or more of the following should be answered affirmatively:

a. That claimant relied upon Deceased in whole or in part for support or maintenance.

b. That it was reasonably necessary for the Deceased to render some financial assistance to claimant in order for him to maintain his accustomed standard of living; or

c. That claimant would in all probability have received some assistance from Deceased, had he continued to live.

In this case, the Applicants fulfill the Sizemore test. The Applicants had a family relationship and the Deceased assumed a moral obligation to support. The applicants relied upon the Deceased in part for support or maintenance and it was reasonable for the Deceased to render said assistance to his sisters. Had the Deceased not past away, he would continue to help the Applicants.

This case patterns after Roller Coaster Co. v. Industrial Commission, 189 P.2d 709 (1948). In Roller Coaster, the Deceased, James Y. Hess, lived with his mother. He had paid varying amounts of money for Applicants purchasing clothing, school expense and groceries. The Deceased also maintained the garden and home. The Court specifically said "The Commission correctly found that the mother and minor sister were partly dependent on decedent for support at the time of his death".

The Defendants and the Industrial Commission rely upon Farnsworth v. Industrial Commission, 534 P.2d 897 (Utah 1975). Farnsworth re-emphases the Sizemore tests as indicated the Rigby v. Industrial Commission, 286 P. 628 (1930), but denied benefits anyway. Farnsworth can be distinguished because of it's facts. In Farnsworth, the Father of the Deceased was making a claim. Even though the facts do not specify, it is understood that the Father was not living with the Deceased. The Deceased did not provide financial support. The Deceased made a claim for dependent benefits based on the fact that the Deceased provided transportation to the VA Hospital and to doctor appointments. The Deceased also performed yard-work and took his father on errands, "mainly to get him out of the house". The Applicant sometimes reimbursed or

paid the Deceased for his services. The Farnsworth court denied benefits because it was found that the “activities was not the type contemplated and intended within the meaning of the Workers Compensation Act”. The Farnsworth court found that in order to be “dependent”, the dependency must be based upon support. Specifically it states: “Case law (is) consistently limited to those fact situations wherein deceased contributed financial assistance or comparable assistance such as growing food, which was used in supporting the dependent”. In the case at hand, the Petitioners were relying upon the financial as well as moral and emotional support that their brother offered and gave them.

The Industrial Commission has indicated a wrong standard whether Petitioners are dependents. Specifically, the Industrial Commission indicates on page four:

“While Mr Caporoz carried his share of household expenses, he did not *subsidize* his sisters’ expenses. To the contrary, it appears that Mr. Caporoz and his sisters had developed a system of sharing common expenses, but that each of them paid their own personal expenses. While Mr. Caporoz may have occasionally treated his sisters to movies, admission to Lagoon or lodging and meals at Wendover, the Industrial Commission does not consider such items as *significant* to the support and maintenance of Ms. Caporoz or Ms. Clastimodo. (Emphasis added)

The Industrial Commission has inserted terms such as “significant or subsidize” in determining whether dependency was necessary. These terms go beyond what was indicated or even contemplated by prior case law. Sizemore and Farnsworth were quite clear in determining dependency. Furthermore, to now insert such terms as stated above would go contrary to public policy or the intent of the Workers Compensation laws. It must be remembered that there cannot be an absolute dollar standard by which to test either the magnitude of claimant’s need or the

magnitude of decedent's help in meeting those needs. See Larsen Section 63.10. Moreover, the applicants may have other substantial sources of support from work, from property, or from other persons on whom claimant is also dependent. The test is whether the Petitioners looked to the Decedent "for maintenance of an accustomed standard of living". It is clear from the facts that the Petitioners did in fact look to the Decedent for support. The Petitioners had Decedent pay the equivalent of the entire rent per month. The Decedent further provided food. The Decedent maintained the premises and automobiles. The Decedent purchased two other automobiles. The Decedent then treated the Petitioners to vacation and recreation. The Petitioners lifestyles were drastically changed when Decedent died. The automobiles were sold. The furniture was sold. The telephone and cable TV were cut off. No more recreation events or vacations.

The purpose of the workers compensation statute is to alleviate the financial hardship on individual employees and those dependent upon them by spreading the cost of an injury throughout the industry that employs the worker. Maryland Cas. Co. v. Industrial Commission, 364 P.2d 1020 (1961), Ortega v. Salt Lake Wet Wash Laundry, 156 P.2d 885 (1945). To further the purpose of the act, any doubt concerning the right of compensation must be resolved in favor of the injured worker and his dependents. See Heaton v. Second Injury Fund, 796 P.2d 676 (1990), J & W Janitorial Co. v. Industrial Commission, 661 P.2d 949 (1983), Kaiser Steel Corp. v. Monfredi, 631 P.2d 888 (1981), McPhie v. Industrial Commission, 567 P.2d 153 (1977), Long v. Western States Refining Co., 384 P.2d 1015 (1963), M & K v. Industrial Commission, 189 P.2d at 134 (1949). If there are any questions concerning whether there is dependency, one must resolve it in favor of an award. See Walls v. Industrial Commission, 857 P.2d 974 (1993) and Heaton. The Industrial Commission has failed to resolve any doubt concerning the right of

compensation in favor of the Petitioners.

Is the estate of the Deceased entitled to an award of Temporary Total Disability Compensation from the date of his injury to the time of his death?

In the case of Parker v. Industrial Commission, P.2d 278 (1935), the Utah Supreme Court had the opportunity to re-examine its position in the Heiselt Const. Co. v. Industrial Commission, 197 P. 589 (1921) case. The Parker court held:

The payment of compensation is, in a sense, a disability wage, and is earned by operation of law. The conditions making it payable all pertaining, the employee is entitled to it just as much as he is entitled to wages earned by contract. As disability payments are "earned" they become vested, and if the employee dies before they are paid, his estate is entitled to them.

In distinguishing it's prior decision in Heiselt the Court in Parker stated:

In all of these cases, including the Heiselt Coinstruction Co. Case, the question was to whether "unaccrued" payments for partial permanent disability passed to the estate. The question did not involve payments which had accrued for temporary total disability. . . . It is clear the court in that case did not intend to lay down any rule to the effect that compensation payments accrued at the time of the death would not pass to the estate.

The Parker Court further attempted to distinguish Heiselt by noting that in the case that "No award had been made for permanent partial disability for the loss of parts of four fingers until after the death of the decedent". The Court went on in interpreting the predecessor to Utah Code Ann. Section 35-1-68 to find that:

The language of R.S. Utah 1933, 42-1074, that compensation shall be paid only to employees or their dependents, is for the protection of the employees and their dependents and was not meant to deprive the estate of the deceased employee of compensation which was due and payable to him during his lifetime.

Thus, in cases of temporary total disability compensation which has accrued, there is no

lapse at the time of the injured workers death and such benefits would be payable to his heirs. The deceased's benefits had accrued. The Industrial Commission has determined by rule when benefits have been deemed and payable. In Rule 568-1-12(1), it states that "Temporary Total compensation shall be due and payable within 21 days of the date of the accident". A review of Parker reveals that even though the facts of the case involved benefits which were awarded by the Commission prior to death, the language clearly indicates that benefits are "earned" and "vested" at the time they are due. The Court defined the point in time when benefits accrue as follows:

The payment of compensation is, in a sense, a disability wage, and is earned by operation of law. The conditions making it payable all pertaining, the employee is entitled to it just as much as he is entitled to wages earned by contract. As disability payments are "earned" they become vested, and if the employee dies before they are paid, his estate is entitled to them.

This is completely consistent with the fact that total temporary disability is actually wage replacement. As in this case, Mr. Caporoz, who was a wage earner prior to his accident, his dependents enjoyed and depended upon the wages he was bringing home prior to the accident. Had Mr. Caporoz been earning wages instead of workers compensation benefits, his estate would have been entitled to them. But for the Defendant's withholding of Applicant's benefits, his dependents would have enjoyed and depended upon those benefits, just as they did the wages, when he was earning them. Why then would his estate not be entitled to at least the total temporary benefits which had already accrued at the time of his death?

The applicant was mortally injured on May 17, 1994. He did not pass away until December 17, 1994. Thus, the Deceased's temporary total disability payments were earned. The fact that Defendants did not pay these benefits when they were due and that the Applicant died before his case was heard by the Industrial Commission should not create an unfair and improper

windfall for the Defendants at the expense of the deceased's heirs. The Parker court stated:

The fact that by accident a warrant had not been issued or there had been a failure to pay him should not inure to the benefit of the parties who should have paid the compensation. The law will consider that done which should have done and not permit those who are obligated and should have paid the compensation to obtain the advantage of a fortuitous circumstance. Because the warrant was not made out and delivered to him cannot in logic, in justice, or in reason affect the right of his personal representative to collect the compensation nor relieve the employer or the state insurance fund of the obligation to pay it.

The Industrial Commission and Administrative Law Judge have certain duties and responsibilities to make appropriate Findings of Fact and Conclusions of Law.

The "Industrial Commission must always weigh any conflicting evidence, carefully considering all factors, without giving particular deference to either side". In IHC v. Board of Review, 839 P.2d 841 (1992), the Court of Appeals requires that "determinations regarding factual circumstances surround industrial injury *must* be ruled on by Administrative Law Judge.

In Adams, the Court of Appeals has indicated that the Agency "must make findings of fact and conclusions of law that are adequately detailed to permit meaningful appellate review". The failure to disclose specific subsidiary findings may or may not be fatal to agency's decision, where agency's findings reveal steps taken by agency in reaching its decision. In this case, there is no method of how either Judge George or the Industrial Commission determined that Petitioners were not dependents taking into consideration their findings.

In Price River Coal Co v. Industrial Commission, 731 P.2d 1079 (1986), the inadequacy of administrative law judge's findings justified remanding the matter back to the hearing level for resolution of conflicting testimony, findings and determination. This case should be remanded for further hearings.. One that will properly enter Findings of Fact, Conclusions of Law and Order.

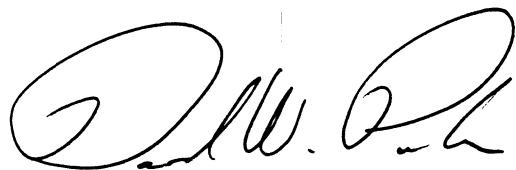
In reviewing the Findings of Fact, one can only come to the conclusion that the Petitioners were in fact partially dependent upon the Deceased and that Temporary Total Disability Compensation had accrued since the date of the accident up to Decedent's demise.

CONCLUSION

Applicants are dependents of the Deceased. They fall into the statutory category under Utah Code Ann. §35-1-71 as both Applicants are sisters to the Deceased. The Applicants relied upon Deceased's support and maintenance. It was reasonable for Deceased to provide the financial assistance. The Deceased and Applicants would have enjoyed future support and assistance had the Deceased not past away. Applicants, therefore, should be entitled to benefits under the Utah Workers Compensation Act pursuant to Utah Code Ann. §35-1-68.

The Applicants should be entitled to the Temporary Total Disability Compensation as they are dependents of the Deceased. The TTD had accrued and was payable according to the Industrial Commission rules and 35-1-65. To rule otherwise would be unfair and create an improper windfall to the Defendants.

Dated this 25 day of March, 1997.

A handwritten signature in black ink, appearing to read 'D.W. Parker', written over a horizontal line.

David W. Parker
Attorney for Petitioners/Appellants

CERTIFICATE OF MAILING

I, hereby certify that I mailed, postage pre-paid, two (2) true and correct copies of the foregoing document(s) this 25 day of March, 1997,

TO:

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A handwritten signature in black ink, appearing to read "D.W. Parker", written over a horizontal line.

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Addendum

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APR. 5 1996

BEFORE THE INDUSTRIAL COMMISSION OF UTAH

VERNA CAPOROZ & ROXSANNE
CLASTIMODO, Sisters of BARNEY
CAPOROZ (Deceased)

Plaintiff(s)

v.

GUILLERMO RODRIGUEZ and/or
MARGARET RODRIGUEZ and/OR
WILLIE RODRIGUEZ and/or TIM
FRAGA dba HANDYMAN WILLIE
(Uninsured), UNINSURED EMPLOYERS
FUND

Defendant(s)

Case No:95415

Judge: Donald L. George

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

HEARING: Hearing Room 334, Industrial Commission of Utah, 160 East 300 South,
Salt Lake City, Utah, on November 27, 1995 at 3:00 o'clock p.m. same
being pursuant to Order and Notice of the Commission.

BEFORE: Donald L. George, Administrative Law Judge.

APPEARANCES: The Applicants, Verna Caporoz and Roxsanne Clastimado, were
represented by David W. Parker, Attorney at Law.

The respondent, Uninsured Employers' Fund was represented by Sharon J.
Eblen, Attorney

The respondents, Guillermo Rodriguez, Margaret Rodriguez, Willie
Rodriguez, Tim Fraga dba handyman Willie, did not appear.

This case involves a claim for medical and burial expenses for the decedent, Barney Caporoz and dependents benefits for his sister Verna Caporoz and his half-sister Roxsanne Clastimado (hereafter known as sisters). Roxsanne Clastimado was joined as an applicant at the hearing upon motion of her attorney. The Uninsured Employers' Fund did not object to joinder. Following the hearing, a conference call was held between Judge Donald L. George, David W. Parker and Sharon Eblen. Ms. Eblen was ordered by Judge Donald L. George to prepare up Findings of Fact, Conclusions of Law and Order. Mr. Parker objected to said proposed Findings of Fact, Conclusions of Law and Order and forwarded his suggestions to Ms. Eblen. Ms. Eblen could not agree on the new proposals. In said conference call, Judge Donald L. George then ordered that Temporary Total Disability be paid to Barney Caporoz estate from May 8, 1994 to December 17, 1994 and for burial expenses. A second conference call was initiated by Judge Donald L. George to David W. Parker. Ms. Eblen was located in chambers with Judge George. At the second conference call, Judge George denied Temporary Total Disability benefits. Judge George also found that there is not enough evidence to show insolvency of Defendants which can be petitioned by Applicants at a later date. Questions also were raised on who were the defendants. Judge George, prior to the hearing, and through his own investigation found that Willie Rodriguez a.k.a. Guillermo Rodriguez was incarcerated at the Utah State Prison. Judge George also called the former phone number of Handyman Willie and talked with Margaret Rodriguez and Tim Fraga. It was Judge George's impression that Margaret Rodriguez and Tim Fraga were operating Handyman Willie. Judge George then sua sponte named them as defendants and notice was provided to them of the hearing.

The respondent employer, Guillermo Rodriguez a.k.a. Willie Rodriguez dba Handyman Willie did not appear at the hearing and default was entered against him at that time. Margaret Rodriguez and Tim Fraga were also notified of the hearing and did not appear and therefore default was entered against them at that same time. The Uninsured Employers' Fund did not dispute the claim or Defendant Guillermo Rodriguez and/or Margaret Rodriguez and/or Willie Rodriguez and/or Tim Fraga dba Handyman Willie's liability for medical bills, and burial expenses, up-to the statutory maximum of \$4,000.00. The only dispute to be resolved at the hearing was whether the sisters of Barney Caporoz were his partial dependents on the date of decedent's industrial accident.

Because of a pending illness of Sharon Eblen, Judge Donald L. George requested that Applicant's attorney draft up the Findings of Fact, Conclusions of Law and Order following the second conference call.

FINDINGS OF FACT

1. Barney Caporoz was injured in a compensable industrial accident in which he suffered

massive internal and external injuries to his head on May 7, 1994. He died as a result of his injuries on December 17, 1994.

2. On the date of his accident, Caporoz was working for W. Rodriguez, dba Handyman Willie earning an average weekly wage of \$225.00 per week, therefore the Temporary Total Disability rate would be \$150.00.
3. Presently W. Rodriguez is serving a sentence at the Utah State Prison.
4. Verna Caporoz and Roxsanne Clastimado, sisters of Barney Caporoz, moved to Utah from Hawaii and shared a home. They moved to Ogden from Salt Lake City when Verna went to work at IOMEGA.
5. At that time they rented the three bedroom home in Ogden in the amount of \$275.00 per month.
6. Verna paid the expenses to move into the house in Ogden (deposit, etc).
7. Rent on the house in Ogden was eventually raised to \$400.00 per month and the sisters needed assistance and support to pay the rent and other expenses.
8. In order to remain in the home, Barney Caporoz moved in with them to share expenses. The applicants testified they could not afford to move.
9. When Barney moved in with his sisters, his sisters owned one bed, a dining room set with three chairs and some dishes.
10. Barney bought himself a waterbed and some couches and other furniture for the family.
11. The three siblings purchased a television set. Barney paid for cable T.V.
12. While Barney lived with his sisters, they purchased three vehicles, all registered to Verna Caporoz. Insurance on the vehicles was \$106.00 per month.

13. Barney Caporoz paid for all recreation and vacations including several trips to Lagoon, Raging Waters, and Wendover. Barney also maintained the cars and home in order to reduce expenses.
14. Verna paid \$175.00 per month toward rent and bills plus \$40.00 per month on expenses. Barney paid a total of \$400.00 per month toward rent and bills (\$150.00 towards rent). Roxsanne paid \$75.00 per month towards rent and about \$30.00 for food. Barney paid out of his own pocket for all other food for the family.
15. Utilities such as electricity, water, sewer and trash pick up were included in the rent.
16. Each sibling paid his or her own portion of the telephone bill. They siblings purchased a pearl necklace and bracelet for their mother at Zales on Verna's credit card. Barney sometimes bought clothes on Verna's JC Penney credit card.
17. At the time of his death, Barney Caporoz was earning \$225.00 per week. Verna Caporoz was earning \$220.00 per week and Roxsanne Clastimodo was earning \$170.00 per week.
18. At the time of Barney's death, he was 33 years old, Verna was 35 years old and Roxsanne was 30 years old.
19. Verna quit her job after Barney was injured in May 1994 and was unemployed until September 1994 to tend to him.
20. Verna is currently working and earning \$1500.00 per month before taxes. Roxsanne is currently working 20 hours per week at minimum wage.
21. Verna testified that she is currently paying off personal debt at a rate of \$250.00 to \$275.00 per month.
22. After Barney's injury, the cable T.V. and phone were cut off and they had to sell their

furniture, cars, T.V., beds and washer and dryer.

23. Barney paid for vacations for himself and his sisters. The applicants can no longer afford to take vacations.

CONCLUSIONS OF LAW

The applicants, Verna Caporoz and Roxsanne Clastimado, were not partial dependents of their brother, Barney Caporoz. Accordingly, they are not entitled to payment of dependent's benefits under the Utah Workers' Compensation Act, Section 35-1-68, U.C.A.

The Defendants, Guillermo Rodriguez and/or Margaret Rodriguez and/or Willie Rodriguez and/or Tim Fraga dba Handyman Willie, are liable to pay all medical expenses resulting from the industrial accident and burial expenses up to the statutory maximum of \$4,000.00, pursuant to Sections 35-1-45 and 35-1-68, U.C.A.

ORDER

IT IS HEREBY ORDERED that the applicants' claim for death benefits based upon partial dependency is dismissed with prejudice.

IT IS FURTHER ORDERED that default is entered against defendants Guillermo Rodriguez and/or Margaret Rodriguez and/or Willie Rodriguez and/or Tim Fraga dba Handyman based upon their failure to answer the application for benefits and failure to appear at the hearing after proper notice.

IT IS FURTHER ORDERED that the defendants, Guillermo Rodriguez and/or Margaret Rodriguez and/or Willie Rodriguez and/or Tim Fraga dba Handyman Willie shall pay all medical expenses reasonably related to Barney Caporoz' industrial accident of May 7, 1994. Said medical expenses have been submitted to the Uninsured Employers Fund. Said payment includes

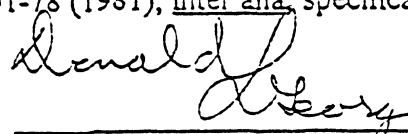
reimbursement to Medicaid for the amounts expended.

IT IS FURTHER ORDERED the defendants, Guillermo Rodriguez and/or Margaret Rodriguez, and/or Willie Rodriguez and/or Tim Fraga dba Handyman Willie reimburse the estate of Barney Caporoz for burial expenses for Barney Caporoz up to the statutory maximum of \$4,000.00 to the estate of Barney Caporoz.

IT IS FURTHER ORDERED that any Motion for Review of the foregoing shall be filed in writing within thirty (30) days of the date hereof, specifying in detail the particular errors and objections and, unless so filed, this Order shall be final and not subject to review or appeal. In the event a Motion for Review is timely filed, the parties shall have fifteen (15) days from the date of filing with the Commission, in which to file a written response with the Commission in accordance with Section 63-46b-12(2), Utah Code Annotated.

That this Order shall be construed as constituting an "Award" within the meaning of the Utah Workers' Compensation and Occupational Disease and Disability Act, generally, and U.C.A. Section 35-1-44(7) (1953) and U.C.A. Section 35-01-78 (1981), inter alia, specifically.

Dated: this 4th day of APRIL 1996.



Honorable Donald L. George

CERTIFICATE OF MAILING

I certify that on April 3rd, 1996. a copy was of the attached Findings of Fact, Conclusions of Law and Order, in the case of Barney Caporoz, Deceased, was mailed to the following persons at the following addresses, postage paid:

Verna Caporoz
2176 North 4500 West
Plain City, UT 84404

Tim Fraga/Handyman Willie
2769 Adams Avenue
Ogden, UT 84401

Roxsanne Clastimodo
2176 North 4500 West
Plain City, UT 84404

David W. Parker
Attorney at Law
50 West 300 South, Suite 900
SLC, UT 84101-1218G

Scott Jensen
Attorney at Law
205 26th Street, #34
Ogden, UT 84401

Sharon Eblen
Attorney at Law
Uninsured Employers Fund
P.O. Box 146612
SLC, UT 84114-6612

Guillermo D. Rodriguez
P. O. Box 250
Draper, UT 84020

Willie Rodriguez
Margrett A. Rodriguez
651 28th Street
Ogden UT 84401

INDUSTRIAL COMMISSION OF UTAH

Wilma Burrows
Wilma Burrows
Adjudication Division

THE INDUSTRIAL COMMISSION OF UTAH

VERNA CAPOROZ and
ROXSANNE CLASTIMODO,
Sisters of BARNEY
CAPOROZ, deceased,

Applicants,

v

GUILLERMO RODRIGUEZ, Margaret
RODRIGUEZ and TIM FRAGA, dba
HANDY MAN WILLIE, and THE
UNINSURED EMPLOYERS' FUND,

Defendants.

ORDER DENYING
MOTION FOR REVIEW

Case No. 95-0415

Verna Caporoz and Roxsanne Clastimodo ask The Industrial Commission of Utah to review the Administrative Law Judge's decision denying their claim for dependents' benefits and the claim of the estate of Barney Caporoz for temporary total disability compensation under the Utah Workers' Compensation Act. The Industrial Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §35-1-82.53 and Utah Admin. Code R568-1-4.M.

ISSUE PRESENTED

1) Were Ms. Caporoz and Ms. Clastimodo dependents of Mr. Caporoz and therefore entitled to the benefits provided by §35-1-73 of the Utah Workers' Compensation Act ("the Act"). 2) Is Mr. Caporoz' estate entitled to temporary total disability compensation for the period between his accident and death? 3) Did the ALJ fail to properly consider and resolve the factual and legal issues presented by applicants' claim?

FINDINGS OF FACT

On May 17, 1994, while working for Handy Man Willie, Mr. Caporoz was injured by accident arising out of and in the course of his employment. Mr. Caporoz died from his injuries on December 17,

ORDER DENYING MOTION FOR REVIEW
VERNA CAPOROS and ROXSANNE CLASTIMODO
(BARNEY CAPOROS, deceased)
PAGE 2

1994. At the time of his accident, Mr. Caporoz resided with his sisters Ms. Caporoz and Ms. Clastimodo.

Mr. Caporoz was 33 years old at the time of his death. Ms. Caporoz and Ms. Clastimodo were 35 and 30 years old, respectively. Ms. Caporoz and Ms. Clastimodo had come to Utah from Hawaii approximately six years earlier. They had first lived together in Salt Lake City, then moved to Plain City. When Mr. Caporoz came to Utah three years later, he too lived in the Plain City home.

Mr. Caporoz and his sisters were each employed. Mr. Caporoz and Ms. Caporoz earned approximately the same income while Ms. Clastimodo earned somewhat less. He paid \$400 per month as his share of rent and other basic household expenses. His contribution was placed in his sisters' checking account, as were his sisters' earnings. Ms. Caporoz then paid rent and other household expenses out of this checking account. Such expenses included rent at \$400 per month, automobile insurance of \$106 per month, payments on some charge accounts, and other household needs.

In addition to Mr. Caporoz' monthly payment toward household expenses, he purchases food items that were shared with his sisters. He also paid for cable television service and his share of long distance telephone charges. He occasionally provided his sisters with money for movies. On several occasions he paid for travel and lodging in Wendover, Nevada and for day trips to Lagoon Amusement Park.

At the time Mr. Caporoz joined his sisters, they already owned some furniture, including table and chairs, beds, loveseat, two living room chairs and a television set. They also had basic household items such as dishes, utensils and pans necessary for their home. After Mr. Caporoz arrived, he purchased several items of second-hand furniture, including a bed for himself, a couch and other living room furniture. The family acquired two used motor vehicles in addition to the automobile Ms. Caporoz already owned.

Immediately after Mr. Caporoz was injured at work, Ms. Caporoz quit her job in order to be with her brother an the hospital. She

ORDER DENYING MOTION FOR REVIEW
VERNA CAPOROZ and ROXSANNE CLASTIMODO
(BARNEY CAPOROZ, deceased)
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remained off work for five months, during which time she and her sister fell behind on their financial obligations. They were compelled to sell various items of personal property. Now that Ms. Caporoz has returned to work, she and her sister are meeting their current obligations and are slowly repaying their accumulated debt. They continue to reside in the Plain City home.

On May 5, 1995, Ms. Caporoz filed a claim for dependent's benefits and burial expense with the Industrial Commission. It does not appear that any claim was ever filed on behalf of Mr. Caporoz for temporary total disability compensation for the period between his injury and death.

DISCUSSION AND CONCLUSION OF LAW

I. DEPENDENTS' BENEFITS:

When an accident causes the death of a worker, §35-1-68(5)(b) of the Act provides survivors' benefits to family members¹ who were dependent on the deceased worker for their support. In this case, the parties agree that Mr. Caporoz' death arose out of and in the course of his employment at Handy Man Willies. The only issue in dispute is whether Ms. Caporoz and Ms. Clastimodo were partially dependent upon Mr. Caporoz for their support.

Ms. Caporoz and Ms. Clastimodo bear the burden of proving dependency,² which is a question of fact that must be made on a case by case basis. They must establish that they relied upon the deceased worker for support, that had the deceased worker not been

¹ Those family members eligible for survivors' benefits are identified in §35-1-71 of the Act and include sisters and half sisters.

² Minor children, disabled children and surviving spouses are generally presumed to be dependent, pursuant to §35-1-71 of the Act. However, no presumption of dependency exists with respect to surviving siblings.

ORDER DENYING MOTION FOR REVIEW
VERNA CAPOROZ and ROXSANNE CLASTIMODO
(BARNEY CAPOROZ, deceased)
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killed, the applicants would have continued to receive some assistance, and that it was reasonable necessary for the deceased worker to render aid to the applicants to allow them to maintain their accustomed standard of living. Farnsworth v. Industrial Commission, 534 P.2d 897, 899 (1975), citing Rigby v. Industrial Commission, 75 Utah 454, 286 P. 628 (1930).

Applying the foregoing test to the facts of this case, the Industrial Commission concludes Ms. Caporoz and Ms. Clastimodo have not established they were dependent upon Mr. Caporoz within the meaning of §35-1-68 of the Act. While Mr. Caporoz carried his share of household expenses, he did not subsidize his sisters' expenses. To the contrary, it appears that Mr. Caporoz and his sisters had developed a system of sharing common expenses, but that each of them paid their own personal expenses. While Mr. Caporoz may have occasionally treated his sisters to movies, admission to Lagoon or lodging and meals at Wendover, the Industrial Commission does not consider such items as significant to the support and maintenance of Ms. Caporoz or Ms. Clastimodo.

The Industrial Commission also concludes that Mr. Caporoz' financial participation was not necessary for Ms. Caporoz and Ms. Clastimodo to maintain their standard of living. It appears that the financial difficulty suffered by Ms. Caporoz and Ms. Clastimodo after their brother's injury resulted from the fact that Ms. Caporoz stopped working, rather than the loss of support from Mr. Caporoz.

In light of the foregoing, the Industrial Commission affirms the determination of the ALJ that Ms. Caporoz and Ms. Clastimodo were not dependent upon Mr. Caporoz and are not entitled to dependents' benefits under the Utah Workers' Compensation Act.

II. TEMPORARY TOTAL DISABILITY COMPENSATION:

Ms. Caporoz and Ms. Clastimodo ask the Industrial Commission to order payment of temporary total disability compensation to Mr. Caporoz' estate for the period between Mr. Caporoz' accident and his death. The Industrial Commission is unaware that any claim for

ORDER DENYING MOTION FOR REVIEW
VERNA CAPOROZ and ROXSANNE CLASTIMODO
(BARNEY CAPOROZ, deceased)
PAGE 5

temporary total disability compensation was filed prior to Mr. Caporoz' death. It is clear than no award of such compensation was made prior to his death. Under such circumstances, the decision of the Utah Supreme Court in Pacific States Cast Iron Pipe Co. v. Industrial Commission, 218 P.2d 970, 974 (1950), is controlling:

The right to compensation for injuries is a right personal to the employee and unless payments have accrued or a determination has been made by the Commission there is no right to which the personal representative or a dependent can succeed.

Because no temporary total disability compensation accrued to Mr. Caporoz before his death, any claim he might have had to such compensation expired with his death. Therefore, the ALJ correctly declined to order payment of temporary total disability compensation to Mr. Caporoz' estate.

III. ALJ'S CONSIDERATION OF DISPUTES OF FACT AND LAW:

Ms. Caporoz and Ms. Clastimodo contend that the ALJ improperly deferred to the analysis and arguments of the Uninsured Employers' Fund, thereby failing to weigh and resolve factual and legal issues according to his own judgment.

The Industrial Commission finds no merit to this argument. It is the written decision, signed and issued by the ALJ, which must be taken as the ALJ's final judgment in this case. Even if the contents of a decision have been suggested by the evidence and arguments of a party, the ALJ manifested his own judgment by signing the decision. Of course, the decision must properly apply the law and be supported by the evidence. Any party believing the decision to be deficient may obtain review by the Industrial Commission, which has authority to modify the ALJ's findings of fact and application of law. In this case, the Industrial Commission has reviewed the testimony, documentary record and arguments of the parties. Based on that review, the Industrial Commission agrees with the ALJ's determination.


ORDER DENYING MOTION FOR REVIEW
VERNA CAPOROZ and ROXSANNE CLASTIMODO
(BARNEY CAPOROZ, deceased)
PAGE 6

ORDER

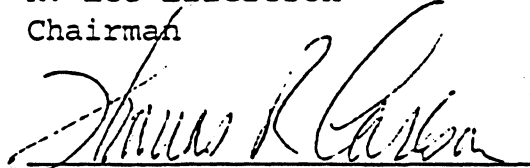
The Industrial Commission affirms the ALJ's decision and denies Ms. Caporoz and Ms. Clastimodo's motion for review. It is so ordered.

Dated this 30th day of October, 1996.





R. Lee Ellertson
Chairman



Thomas R. Carlson
Commissioner



Colleen S. Colton
Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Industrial Commission to reconsider this Order. Any such request for reconsideration must be received by the Industrial Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

ORDER DENYING MOTION FOR REVIEW
VERNA CAPOROZ and ROXSANNE CLASTIMODO
(BARNEY CAPOROZ, deceased)
PAGE 7

CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Denying Motion For Review in the matter of Barney Caporoz Case No. 95-0415 was mailed first class postage prepaid this 30th day of October, 1996, to the following:

DAVID W. PARKER
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50 WEST 300 SOUTH
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TIM FRAGA
2769 ADAMS AVENUE
OGDEN, UTAH 84401

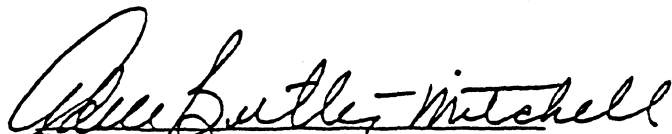
VERNA CAPOROZ
2176 NORTH 400 WEST
PLAIN CITY, UTAH 84404

ROXSANNE CLASTIMODO
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SHARON EBLEN
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WILLIE RODRIGUEZ
MARGARET A. RODRIGUEZ
651 28TH STREET
OGDEN, UTAH 84401



Adell Butler-Mitchell
Support Specialist
Industrial Commission of Utah

ORDER DENYING MOTION FOR REVIEW
VERNA CAPOROZ and ROXSANNE CLASTIMODO
(BARNEY CAPOROZ, deceased)
PAGE 7

CERTIFICATE OF MAILING

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BANK ONE TOWER, SUITE 900
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Industrial Commission of Utah

Utah Code § 35-1-86

WEST'S UTAH CODE
TITLE 35. LABOR--INDUSTRIAL COMMISSION
CHAPTER 1. WORKERS' COMPENSATION

Current through End of 1996 General and 2nd Special Sessions

§ 35-1-86. Court of Appeals may review commission's actions

The Court of Appeals has jurisdiction to review, reverse, or annul any order of the commission, or to suspend or delay the operation or execution of any order.

As last amended by Chapter 72, Laws of Utah 1988.

REPEAL

< Repealed by Laws 1996, c. 240, § 376, effective July 1, 1997 >

Search this disc for cases citing this section.

Utah Code § 35-1-71

WEST'S UTAH CODE
TITLE 35. LABOR--INDUSTRIAL COMMISSION
CHAPTER 1. WORKERS' COMPENSATION

Current through End of 1996 General and 2nd Special Sessions

§ 35-1-71. Dependents--Presumption

< Text effective until July 1, 1997 >

The following persons shall be presumed to be wholly dependent for support upon a deceased employee:

(1) Children under the age of 18 years, or over if physically or mentally incapacitated and dependent upon the parent, with whom they are living at the time of the death of such parent, or who is legally bound for their support.

(2) For purposes of payments to be made under Subsection 35-1-68 (2)(a)(i), a surviving husband or wife shall be presumed to be wholly dependent upon a spouse with whom he or she lived at the time of the employee's death.

In all other cases, the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury or death of such employee, except for purposes of dependency reviews under Subsection 35-1-68 (2)(a)(iii). No person shall be considered as a dependent unless he or she is a member of the family of the deceased employee, or bears the relation of husband or wife, lineal descendant, ancestor, or brother or sister. The word "child" as used in this title shall include a posthumous child, and a child legally adopted prior to the injury. Half brothers and half sisters shall be included in the words "brother or sister" as above used.

As last amended by Chapter 126, Laws of Utah 1987.

< For text as renumbered and amended effective July 1, 1997, see § 35A-3-403 >

Search this disc for cases citing this section.

Utah Code § 35-1-68

WEST'S UTAH CODE
TITLE 35. LABOR--INDUSTRIAL COMMISSION
CHAPTER 1. WORKERS' COMPENSATION

Current through End of 1996 General and 2nd Special Sessions

§ 35-1-68. Employers' Reinsurance Fund--Injury causing death--Burial expenses--Payments to dependents

< Text effective until July 1, 1997 >

(1) There is created an Employers' Reinsurance Fund for the purpose of making payments for industrial accidents or occupational diseases occurring on or before June 30, 1994. The payments shall be made in accordance with Title 35, Chapters 1 and 2. The Employers' Reinsurance Fund shall have no liability for industrial accidents or occupational diseases occurring on or after July 1, 1994. This fund shall succeed to all monies previously held in the "Special Fund," the "Combined Injury Fund," or the "Second Injury Fund." Whenever this code refers to the "Special Fund," the "Combined Injury Fund," or the "Second Injury Fund" that reference is considered to be the Employers' Reinsurance Fund. The state treasurer shall be the custodian of the Employers' Reinsurance Fund, and the commission shall make provisions for and direct its distribution. Reasonable costs of administration or other fees may be paid from the fund.

(2) The state treasurer shall:

(a) receive workers' compensation premium assessments from the State Tax Commission; and

(b) invest the Employers' Reinsurance Fund to ensure maximum investment return for both long and short term investments in accordance with Section 51-7-12.5.

(3) The commission may employ or retain counsel to represent the Employers' Reinsurance Fund in proceedings brought to enforce claims against or on behalf of the fund. Upon request of the commission, the attorney general shall aid in representation of the fund.

(4) The liability of the state, its departments, agencies, instrumentalities, elected or appointed officials, or other duly authorized agents, with respect to payment of any compensation benefits, expenses, fees, medical expenses, or disbursement properly chargeable against the Employers' Reinsurance Fund, is limited to the cash or assets in the Employers' Reinsurance Fund, and they are not otherwise, in any way, liable for the operation, debts, or obligations of the Employers' Reinsurance Fund.

(5) If injury causes death within a period of 312 weeks from the date of the accident, the employer or insurance carrier shall pay the burial expenses of the deceased as provided in Section 35-1-81, and further benefits in the amounts and to the persons as follows:

***9923** (a)(i) If there are wholly dependent persons at the time of the death, the payment by the employer or its insurance carrier shall be 66- 2/3% of the decedent's average weekly wage at the time of the injury, but not more than a maximum of 85% of the state average weekly wage at the time of the injury per week and not

less than a minimum of \$45 per week, plus \$5 for a dependent spouse, plus \$5 for each dependent minor child under the age of 18 years, up to a maximum of four such dependent minor children, but not exceeding the average weekly wage of the employee at the time of the injury, and not exceeding 85% of the state average weekly wage at the time of the injury per week. Compensation shall continue during dependency for the remainder of the period between the date of the death and the expiration of 312 weeks after the date of the injury.

(ii) The payment by the employer or its insurance carrier to wholly dependent persons during dependency following the expiration of the first 312-week period described in Subsection (5)(a)(i) shall be an amount equal to the weekly benefits paid to those wholly dependent persons during that initial 312-week period, reduced by 50% of any weekly federal Social Security death benefits paid to those wholly dependent persons.

(iii) The issue of dependency shall be subject to review by the commission at the end of the initial 312-week period and annually thereafter. If in any such review it is determined that, under the facts and circumstances existing at that time, the applicant is no longer a wholly dependent person, the applicant may be considered a partly dependent or nondependent person and shall be paid such benefits as the commission may determine under Subsection (5)(b)(ii).

(iv) For purposes of any dependency determination, a surviving spouse of a deceased employee shall be conclusively presumed to be wholly dependent for a 312-week period from the date of death of the employee. This presumption shall not apply after the initial 312-week period and, in determining the then existing annual income of the surviving spouse, the commission shall exclude 50% of any federal Social Security death benefits received by that surviving spouse.

(b)(i) If there are partly dependent persons at the time of the death, the payment shall be 66- 2/3% of the decedent's average weekly wage at the time of the injury, but not more than a maximum of 85% of the state average weekly wage at the time of the injury per week and not less than a minimum of \$45 per week. Compensation shall continue during dependency for the remainder of the period between the date of death and the expiration of 312 weeks after the date of injury as the commission in each case may determine. Compensation may not amount to more than a maximum of \$30,000. The benefits provided for in this subsection shall be in keeping with the circumstances and conditions of dependency existing at the date of injury, and any amount awarded by the commission under this subsection shall be consistent with the general provisions of this title.

***9924** (ii) Benefits to persons determined to be partly dependent under Subsection (5)(a)(iii) shall be determined by the commission in keeping with the circumstances and conditions of dependency existing at the time of the dependency review and may be paid in an amount not exceeding the maximum weekly rate that partly dependent persons would receive if wholly dependent.

(iii) Payments under this section shall be paid to such persons during their dependency by the employer or its insurance carrier.

(c) If there are wholly dependent persons and also partly dependent persons at the time of death, the commission may apportion the benefits as it considers just and equitable; provided, that the total benefits awarded to all parties concerned do not exceed the maximum provided for by law.

As last amended by Chapter 266, Laws of Utah 1994.

----- Excerpt from page 6515 follows -----
R568-1-4. Pleadings and Discovery.

A. For the purposes of > Section 63-46b-3, U.C.A., all adjudicative proceedings for workers' compensation and occupational disease claims shall only be commenced by the injured worker or dependent filing a request for agency action with the Commission. The Administrative Law Judge is afforded discretion in allowing intervention of other parties pursuant to > Section 63-46b-9, U.C.A. The Application for Hearing is the request for agency action. All such applications shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications without supporting documentation will not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided.

B. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests on the applicant to initiate the action by filing an Application for Hearing with the Commission.

C. When an Application for Hearing is filed with the Commission, the Commission shall forthwith mail a copy to the employer or to the employer's insurance carrier.

D. The employer or insurance carrier shall have 30 days following the date of the mailing of the application to file a written answer with the Industrial Commission, admitting or denying liability for the claim. The answer should state all affirmative defenses with sufficient accuracy and detail that an applicant may be fully informed of the nature of the defense asserted. All answers shall include a summary and categorization of benefits paid to date on the claim. A copy shall be sent to the applicant or, if there is one, to the applicant's attorney by the defendant.

E. When an employer or insurance carrier fails to file an answer within the 30 days provided above, the Commission may enter a default against such employer or insurance carrier. The Commission may then set the matter for hearing, take evidence bearing on the claim, and enter an Order based on the evidence presented. Such defaults may be set aside by following the procedure outlined in the Utah Rules of Civil Procedure. Said default shall apply to the defendant employer or insurance carrier and shall not be construed to deprive the Employers' Reinsurance Fund or the Uninsured Employers' Fund of any appropriate defenses.

----- Excerpt from page 6516 follows -----

F. Where the answer denies liability solely on the medical aspects of the case, the applicant, through his/her attorney or agent, and the employer or insurance carrier, with the approval of the Commission or its representative, may enter into a stipulated set of facts, which stipulation, together with the medical documents bearing on the case in the Commission's file, may be used in making the final determination of liability.

G. When deemed appropriate, the Commission or its representatives may have a pre-hearing or post-hearing conference.

H. Upon filing of the Answer, the defendant may commence discovery with appropriate sets of interrogatories. Such discovery should focus on the accident event, witnesses, as well as past and present medical care. The defendant shall also be entitled to appropriately signed medical releases to allow gathering of pertinent medical records. The defendant may also require the applicant to submit to an independent medical examination to be conducted by a physician of the defendant's choice. Failure of an applicant to comply with such requests may result in the dismissal of a claim or a delay in the scheduling of a hearing.

I. Commission subpoena forms shall be used in all discovery proceedings and must be signed, unless good cause is shown for a shorter period, at least one week prior to any scheduled hearing.

J. All medical records shall be filed by the employer or its insurance carrier as a single joint exhibit at least one week before the scheduled hearing. Claimant must cooperate and submit all pertinent medical records contained in his file to the employer or its insurance carrier for the joint exhibit submission two weeks in advance of a scheduled hearing. Exhibits are to be placed in an indexed binder arranged by care provider in chronological order. Exhibits should include all relevant treatment records with the exception of hospital nurses notes.

K. The Administrative Law Judge must be notified one week in advance of any proceeding where it is anticipated that more than four witnesses will be called, or where it is anticipated

that the hearing of the evidence will require more than two hours.

L. Decisions of the presiding officer in any adjudicative proceeding will be issued in accordance with the provisions of > Section 63-46b-5 or > 63-46b-10, U.C.A.

M. Any party to an adjudicative proceeding seeking review of an Order by the Agency may file a written request for review in accordance with the provisions of > Sections 63-46b-12, 63-46b-13, > 63-46b-14, > 63-46b-15, and > 63-46b-16, U.C.A. A Motion for Review of any order entered by an Administrative Law Judge may be filed pursuant to the provisions of > Section 63-46b-12, U.C.A. Unless so filed, the Order will become the award of the Commission and will be final. If appropriately filed, the Administrative Law Judge may:

----- Excerpt from page 6517 follows -----

1. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary, 2. Amend or modify the prior Order by a Supplemental order, or

3. Refer the entire case to the Commission for review under > Section 35-1-82.53, U.C.A.

If the Administrative Law Judge enters a Supplemental Order, as provided above, it shall be final unless a Motion for Review of the same is filed with the Commission.

N. In formal adjudicative proceedings, the Industrial Commission shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of > Section 35-1-88, U.C.A., or as may be otherwise modified by the presiding officer.

O. A request for reconsideration of a Commission's Order on Motion for Review may be allowed and shall be governed by the provisions of > Section 63-46b-13, U.C.A. Any petition for judicial review of the Commission's Order on Motion for Review shall be governed by the provisions of > Section 63-46b-14, U.C.A.

UT-ADMIN-CODE - UT ADC R568-1, Workers' Compensation Rules - Procedures.

----- Excerpt from page 6521 follows -----
R568-1-12. Interest.

A. Interest must be paid on each benefit payment which comprises the award from the date that payment would have been due and payable at the rate of 8% per annum.

B. For the purpose of interest calculation, benefits shall become "'due and payable'" (as used in > Section 35-1-78, U.C.A.) as follows:

1. Temporary total compensation shall be due and payable within 21 days of the date of the accident.

2. Permanent partial compensation shall be due and payable on the next day following the termination of a temporary total disability. However, where the condition is not fixed for rating purposes, the interest shall commence from the date the permanent partial impairment can be medically determined.

3. Permanent partial or permanent total disability compensation payable by the Employers' Reinsurance Fund or the Uninsured Employers' Fund shall be due and payable as soon as reasonably practical after an order is issued.

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