

**From:** Don Drinko  
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**Gallagher Sharp Shop Talk: Workers' Compensation**

**QUESTION: Does a common pleas court have jurisdiction to hear an appeal from a determination that an individual seeking death benefits is not a “fully dependant spouse?”**

Appeals to court in Ohio are governed by R.C. 4123.512, which authorizes such appeals only in very limited circumstances. The statute has been read narrowly, and generally applies only to situations where an order “grants or denies the claimant’s right to participate.” *State ex rel. Liposchak v. Indus. Comm.*, 90 Ohio St.3d 276 (2000). Recently, the Eleventh District Court of Appeals was presented with a case involving a work-related fatality, a common law spouse, and whether a denial of death benefits pursuant to R.C. 4123.59 could be appealed to common pleas court.

*Centric v. Buehrer*, 2018-Ohio-698, involved a worker who was killed in the course of and arising from his employment. A claim for death benefits was filed by Centric, who claimed to live with the decedent and her four children. This application was granted by a District Hearing Officer, but a Staff Hearing Officer reversed, finding benefits were not payable to Centric and one of the children because there was “no evidence ... to establish that [Plaintiff and decedent] were married and living together.” Centric later filed a Notice of Appeal and Complaint in the Portage County Court of Common Pleas, alleging that they were each entitled to receive death benefits arising from the death of decedent. The Complaint also alleged that the Plaintiff was “married” to and fully dependent on the decedent at the time of death. The BWC filed a Motion for Summary Judgment, arguing that the couple were (1) never officially married; (2) had lived apart since 2004; and (3) had their own bank accounts and filed individual tax returns. The trial court issued a judgment granting summary judgment to the BWC, prompting the Plaintiff to file an appeal as of right to the Eleventh District.

The Eleventh District affirmed, but not for the reasons cited by the trial court. The Court held that the trial court should have held that it lacked subject matter jurisdiction over the appeal because the Industrial Commission’s denial of her claim for workers’ compensation death benefits did not fall within the “limited circumstances” set forth in R.C. 4123.512. In *Liposchak, supra*, the Supreme Court held that “the only right-to-participate question that is appealable is whether an injury, disease, or death occurred in the course of and arising out of his or her employment.” *Id.* Dependent status or the right to receive benefits is not appealable unless it concerns the causal connection between the injury, disease, or death and employment. The only issue before the trial court was whether Centric was a “wholly dependent spouse,” which had no bearing on the underlying cause of death or relation to employment. Therefore, the trial court should have concluded it did not have subject matter jurisdiction to hear the appeal. Centric’s sole avenue of appeal was via a *mandamus* action in the Tenth Appellate District.

The Court in *Centric* was not deterred by the fact that the lack of subject matter of jurisdiction was not raised in the Motion filed by the BWC. The Court noted that the issue of subject matter of jurisdiction can be raised at any time in proceedings, and employers and their counsel should

be sure to confirm that matters appealed to court actually come within the limited jurisdiction set forth in R.C. 4123.512.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, please feel free to contact me.

Donald G. Drinko, Esq.  
Certified Workers' Compensation Specialist  
GALLAGHER SHARP, LLP  
1501 Euclid Avenue - 6th Floor  
Cleveland, OH 44115  
Direct Dial: 216.522.1326  
[ddrinko@gallaghersharp.com](mailto:ddrinko@gallaghersharp.com)  
[www.gallaghersharp.com](http://www.gallaghersharp.com)