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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: When seeking death benefits, can a spouse who is not living with the decedent be considered “wholly dependent?”

When a worker is killed in the course of and arising from his employment in Ohio, his or her spouse is entitled to apply for death benefits. R.C. 4123.59 governs these benefits, and provides that benefits are payable to “wholly dependent persons at the time of death.” *R.C. 4123.59(B)*. The statute also provides for benefits for “partially dependent persons,” and for a presumption that a spouse who is living with the decedent (or who is not living with the spouse due to “aggression” of the decedent) is “presumed to be wholly dependent for support” upon the deceased employee. *R.C. 4123.59(D)(1)*. Recently, Tenth District Court of Appeals was presented with a case involving a deceased worker, a spouse who lived in Greece, and what kind of evidence needs to be produced to demonstrate a spouse is “residing with” and/or “wholly dependent.”

State ex rel. Maglis v. Indus. Comm., 2016-Ohio-4644, involved a worker who was fatally injured in September, 2012. At the time, the decedent was working as a bridge painter in Ohio. His spouse lived in Greece, and the evidence demonstrated that the decedent lived in Greece with her from November to March, then would return to Ohio to work from April to November. The spouse filed a claim for death benefits, alleging that she was “wholly dependent” on the decedent for income and that he resided with her when he was not working. She also claimed in an affidavit that she was unemployed, that while he was working in Ohio he would send her all the money that he made, that a probate judge has approved her acceptance of a settlement and that the Social Security Administration had approved her to receive death benefits. The claim proceeded to hearing, where the request for benefits was denied at every level. The Industrial Commission agreed to hear her request for reconsideration, and on November 8, 2014 concluded that she was “partially dependent,” and therefore entitled to 10 weeks of death benefits. It found she was not entitled to a statutory presumption because she was not residing with the decedent at the time he died, and that the spouse had failed to produce sufficient evidence of support. (Beyond her affidavit, the spouse only produced a few MoneyGram transaction slips from a previous year.) The Commission based its finding of “partial dependency” on the fact that the parties were married, giving rise to an “obligation of support.” The spouse responded with an action in *mandamus* before the Tenth District Court of Appeals.

The Tenth District affirmed, finding that the Industrial Commission applied the pertinent law to the salient facts. The Court began with a discussion of the meaning of “wholly dependent,” and noted that even assuming that everything the spouse was saying was true, she was not living with the decedent at the time of the incident. Therefore, no presumption could apply. The Court also discussed the idea of financial dependency, noting that it was the spouse’s burden to demonstrate that she was wholly dependent on the decedent for support, yet produced only her own testimony and a few MoneyGrams from a previous year. No evidence of travel (eg. a passport or airline tickets) was produced, and determinations by other judicial or administrative bodies were neither

binding nor particularly persuasive. The Court also rejected the spouse's contention that the Commission erred in applying *State ex rel. Dell v. Indus. Comm.*, a case involving a non-resident spouse, to the facts in this case. While *Dell* presented a different situation (a man who married two women, then died, leaving the non-resident spouse able to receive death benefits) the principle it cites – that an obligation of at least partial support exists in a spousal relationship – supports a finding of “partial dependence.”

It can be surmised that the Court in *Maglis* was perhaps influenced by the fact that the spouse did not live in the United States, was receiving Social Security benefits, and received a \$500,000 wrongful death settlement in finding that her dependency on the decedent was only “partial.” However, *Maglis* reinforces the fact that marital status and residency are two crucial facts to ascertain in claims involving death benefits.

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.

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