

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F209533

JIM BAYLES, JR. (DECEASED), EMPLOYEE	CLAIMANT
BOYD SANDERS CONSTRUCTION CO., EMPLOYER	RESPONDENT #1
AMERICAN INTERSTATE INSURANCE CO., CARRIER	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED OCTOBER 19, 2004

The case is submitted for an Opinion on briefs filed by the parties and upon the record of the Arkansas Workers' Compensation Commission.

Claimant was represented by James W. Stanley, Attorney at Law, North Little Rock, Arkansas.

Respondent #1 was represented by Michael Ryburn, Attorney at Law, Little Rock, Arkansas.

Respondent #2 was represented by Terry Pence, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held on this claim on June 7, 2004; a Prehearing Order was filed on that same date. As reflected in the Prehearing Order, the parties agreed that this claim would be submitted for adjudication upon the Commission's file and the parties' briefs.

By agreement of the parties, the Prehearing Order notes that the following issues are to be addressed: Who are the legal dependents of the deceased, and what benefits are they entitled to receive? Jim Bayles, Sr. and Imogene Bayles, parents of the deceased Claimant, contend that they were dependent upon Claimant within the meaning of the

statute and are therefore entitled to benefits. Respondents contend that Claimant's parents are not dependent, in whole or in part, and are therefore not entitled to benefits.

The Prehearing Order contains a number of stipulations agreed to by the parties. The stipulations, which are hereby accepted, are as follows:

1. The employee-employer-carrier relationship existed at all relevant times.
2. The Claimant, Jim Bayles, Jr., died as a result of a work related accident on or about August 23, 2002.
3. Respondent #1 paid funeral benefits.
4. At the time of his death, Jim Bayles, Jr.'s average weekly wage was \$824.23.
5. For the purpose for determining an order of preference under Ark. Code Ann. § 11-9-527(c), the only persons claiming benefits based upon Claimant's death are his parents.
6. Each parent's deposition and the Workers' Compensation Commission file will constitute the record in this matter.

THE RECORD

As noted above, the parties stipulated that each parent's deposition and the Workers' Compensation Commission file will constitute the record in this matter. The following items from the file were relied upon to produce this Opinion, and will therefore be "blue backed" or otherwise designated as the record in this matter:

1. The oral deposition of Jim Bayles, Sr., dated March 25, 2004;
2. The oral deposition of Imogene Bayles, dated March 25, 2004;
3. Claimant's response to the Prehearing Questionnaire received November 3, 2003, with a copy of Claimant's death certificate attached;

4. The Prehearing Order filed June 7, 2004;
5. A letter from James W. Stanley, Jr., dated June 7, 2004, with copies of checks numbered 2934, 3035, 3073, 3304, and 3320 attached;
6. Brief of the Claimant received July 12, 2004;
7. Respondent's Brief received July 13, 2004; and,
8. Brief of Death & Permanent Total Disability Trust Fund received July 14, 2004.

DISCUSSION

Claimant sustained a fatal work related injury on August 21, 2002; the parties stipulated that Claimant died as a result of this work related accident on or about August 23, 2002. Respondent #1 paid funeral benefits. At the time of his death, Claimant was divorced with adult children. Claimant's parents, Jim Bayles, Sr. and Imogene Bayles (hereinafter "parents"), seek benefits as dependents under Ark. Code Ann. § 11-9-527.

Until three months prior to his death, Claimant resided with his parents in their home and provided them with money to assist with expenses such as food and utilities. However, three months prior to his death, Claimant took up residence in a home located on the farm owned by his parents. Claimant did not pay rent to his parents, but he was responsible for all expenses, such as utilities and insurance, related to the farm home.

After a final payment in 2002, the parents now own the farm debt free. Payments in the amount of \$5,000.00 were made each year until the farm was paid off; Claimant assisted with these payments. Copies of five checks in the record, all drawn on Claimant's account, support this contention. The last check is dated May 6, 2002, in the amount of \$1,280.00; the date of this check, and its notation "payment on farm," establish that the final payment on the farm was made some time prior to Claimant's death in August of

2002. Both parents testified that the farm was in a living trust, and that Claimant would have acquired an interest in the farm through this trust.

The parents testified concerning their income and expenses. Between Veteran's Administration benefits and Social Security retirement benefits, their income is (and was at the time of Claimant's death) approximately \$3,000.00 per month. In addition, the parents receive approximately \$4,000.00 annually under a federal program that leases a portion of the farm. Imogene Bayles testified that this income is sufficient to pay the parents' expenses.

Q. Do you end up with money left over every month?

A. Oh, yes, a little.

The farm (including the home in which Claimant resided) and the parents' house are paid for; the parents also own a vacant building in which they formerly operated a store.

Thus, the record reflects that at the time of his death Claimant did not reside with his parents. He no longer assisted them with payments on the farm, since the debt was paid prior to his death; he did not pay them rent for living in the farm home. Imogene Bayles was specifically asked about the degree of the parents' dependency upon their son.

Q. This claim is about whether you and your husband were dependants of your son. Can you tell me why you claim that you were dependent on him?

A. Well, he just helped us.

Q. I'm talking about financially.

A. Well, he was right there to help us, you know, and anything we needed.

Parents that are "wholly and actually dependent upon the deceased employee" may secure compensation for the death of that employee. Ark. Code Ann. § 11-9-527(c)(4);

see generally 99 C.J.S. Worker's Compensation §§ 275-77 (2000). Benefits may also be paid if the parents are partially dependent. Ark. Code Ann. § 11-9-527(i). A party seeking death benefits bears the burden of proving entitlement to those benefits by a preponderance of the evidence. See Lawhon Farm Services v. Brown, 335 Ark. 272, 280, 984 S.W.2d 1, ___ (1998); Ark. Code Ann. § 11-9-704(c)(2). "Preponderance of the evidence" means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, ___ (1947).

Dependency is a fact question to be determined in the light of the surrounding circumstances. Fordyce Concrete v. Garth, 84 Ark. App. 256, 262, ___ S.W.3d ___, ___ (2003). All questions of dependency shall be determined as of the time of the injury. Ark. Code Ann. § 11-9-527(h). The test of "actual dependency" does not require a showing of total dependence; a finding of some measure of actual support or a reasonable expectation of support will suffice. Fordyce Concrete, 84 Ark. App. at 262, ___ S.W.3d at ___. It may be appropriate to consider the amount of any contribution the decedent made to his parents' support in the light of the amount of any contribution the parents made to the decedent's support. See Williams v. Cypress Creek Drainage, 5 Ark. App. 256, 259, 635 S.W.2d 282, ___ (1982).

I respectfully find that the parents have not sustained their burden of proving entitlement to death benefits by a preponderance of the evidence. The record reflects that Claimant did not actually support his parents in any measure, as of the time of his fatal injury. He no longer resided with his parents, and apparently no longer assisted with the food, utilities, or any other expenses associated with living in their home. He no longer

assisted his parents in paying the debt on the farm that he could reasonably expect to have an interest in some day; the farm debt was paid off some time prior to his fatal injury. Indeed, it could be said that the parents actually supported Claimant: he lived rent free in the farm home they owned.

Furthermore, the evidence of greater convincing force suggests that the parents did not have a reasonable expectation of support from Claimant at the time of his fatal injury. Again, they supported Claimant by allowing him to live rent free in a home. As Imogene Bayles confirmed, their monthly income (unchanged since Claimant's injury) is sufficient to pay their expenses, with "a little" left over each month. This is true without considering the unencumbered assets owned by the parents, their farm and vacant store building. I acknowledge Imogene Bayles' testimony that Claimant "just helped us" and "was right there to help us." However, the record does not reflect actual dependency at the time of Claimant's fatal injury, either as to any measure of actual support or a reasonable expectation of support.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed at all relevant times.
3. The Claimant, Jim Bayles, Jr., died as a result of a work related accident on or about August 23, 2002.
4. Respondent #1 paid funeral benefits.
5. At the time of his death, Jim Bayles, Jr.'s average weekly wage was \$824.23.
6. For the purpose for determining an order of preference under Ark. Code Ann. § 11-9-527(c), the only persons claiming benefits based upon Claimant's death are his

parents.

7. Each parent's deposition and the Workers' Compensation Commission file will constitute the record in this matter.

____8. Claimant's parents did not sustain their burden of proving entitlement to death benefits by a preponderance of the evidence. The record reflects that, as of the time of his fatal injury, Claimant did not actually support his parents in any measure, and that they did not have a reasonable expectation of support. Indeed, the record reflects that Claimant's parents supported Claimant by allowing him to live rent-free in their farm home.

____9. Because Claimant's parents failed to prove actual dependency, it is not necessary to discuss what benefits they might be entitled to receive.

ORDER

Claimant's parents failed to sustain their burden of proving entitlement to benefits under Ark. Code Ann. § 11-9-527. Therefore, the above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

D. FRANKLIN AREY, III,
Administrative Law Judge

DFA/ml