

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E004333

**JOHN T. DOPIERALLA (DECEASED)
SUZANNE DOPIERALLA (WIFE OF DECEDENT)**

CLAIMANT

GENERAL MOTORS ACCEPTANCE CORP.

RESPONDENT EMPLOYER

**ROYAL INSURANCE CO.
SECOND INJURY FUND**

**RESPONDENT CARRIER NO. 1
RESPONDENT CARRIER NO. 2**

ORDER AND OPINION FILED NOVEMBER 9, 2006

Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE JAMES W. STANLEY, Attorney at Law,
Little Rock, Arkansas.

Respondent No. 1 represented by the HONORABLE MICHAEL J. EMERSON, Attorney
at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law,
Little Rock, Arkansas.

STATEMENT OF THE CASE

This opinion is written on the record at the request of the parties to address the
single issue of whether the decedent's wife and two children are entitled to dependent
benefits.

The record consists of briefs from the claimant and Respondent No. 1, copies of
the marriage license of the decedent and his wife and copies of the birth certificates of
the two children.

The stipulations are:

1. There was a compensable injury on February 2,
1990.

2. The Full Commission found John Dopieralla was permanently and totally disabled as of June 2003.

3. John Dopieralla married Suzanne Houser on September 9, 1990.

4. John Dopieralla fathered two children - - Joshua T. Dopieralla on January 29, 1991 and John M. Dopieralla on June 30, 1996.

5. John Dopieralla died September 20, 2004.

From a review of the record as a whole, to include documents and other matters properly before the Commission, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

1. There was a compensable injury on February 2, 1990.

2. The Full Commission found John Dopieralla was permanently and totally disabled as of June 2003.

3. John Dopieralla married Suzanne Houser on September 9, 1990.

4. John Dopieralla fathered two children - - Joshua T. Dopieralla on January 29, 1991 and John M. Dopieralla on June 30, 1996.

5. John Dopieralla died September 20, 2004.

6. The preponderance of the evidence provides that John Dopieralla did not have a dependent wife and dependent children at the time of the initial injury (2/2/90) and dependent benefits are denied.

7. The preponderance of evidence provides that girlfriends or fiancées are not

listed in the class of beneficiaries that are able to prove wholly or actually dependency on the deceased employee and dependent benefits must be denied.

DISCUSSION

The decedent in this matter was single and without children at the time of his initial compensable injury on February 2, 1990. He married Suzanne Houser on September 9, 1990, and fathered two children, John M. Dopieralla on June 30, 1996 and Joshua T. Dopieralla on January 29, 1991. John Dopieralla was found to be permanently and totally disabled as of June 2003 and he died September 20, 2004.

Respondents rely on Ark. Code Ann. §11-9-527(h), which provides that “All questions of dependency shall be determined as of the time of the injury.” See, also, *Sherwin-Williams v. Yeager*, 219 Ark. 20, 239 S.W.2d 1019 (1951) (decision under prior law).

The claimant first contends that the “date of the injury” must be established. The claimant contends the date of the injury must be the date the compensable consequences of the injury caused Mr. Dopieralla’s death and that was September 20, 2004. The claimant relies on Ark. Code Ann. §11-9-102(18) and (20)(A); however, this reference is for the statute after passage of Act 796 of 1993. The statutory law that must be relied on in this matter is Ark. Code Ann. §11-9-101, et al. (1987), since the date of the claimant’s initial injury was 1990.

Ark. Code Ann. §11-9-102(14) (1987) provides:

“Time of accident” or “date of accident” means the time or date of the occurrence of the accidental incident from which

injury, disability or death results;

Taking into consideration both Ark. Code Ann. §11-9-102(14) (1987) and Ark. Code Ann. §11-9-527(h) (1987), I find the appropriate date to be considered for dependent benefits is the date of the initial compensable injury (2/2/90) and not the date of the compensable consequence causing Mr. Dopieralla's untimely death. When the date of the compensable injury is considered (2/2/90), Mr. Dopieralla was unmarried and without children. It was only later that he married and began his family. I find the preponderance of the evidence provides that Mr. Dopieralla did not have a dependent wife or dependent children at the time of his initial injury and, therefore, dependent benefits are denied.

The claimant next contends that while Mr. Dopieralla was not married on February 2, 1990, Suzanne Houser (Mr. Dopieralla's future wife) was dependent upon him and, therefore, is entitled to dependent benefits. Ark. Code Ann. §11-9-527 (1987) speaks about beneficiaries and specifies percentages of the claimant's average weekly wage each group would be entitled to receive if they proved they were wholly or actually dependent upon the deceased employee. Several classes of people are identified in this section, however, girlfriends or fiancées are not listed. I find the preponderance of the evidence does not provide that a girlfriend or fiancée is entitled to dependency benefits following the death of the deceased employee.

ORDER

The preponderance of the evidence provides that John Dopieralla did not have a dependent wife and dependent children at the time of the initial injury (2/2/90) and that

dependent benefits must be denied. The preponderance of the evidence provides also that girlfriends or fiancées are not listed in the class of beneficiaries that are able to prove wholly or actually dependency on the deceased employee and dependent benefits must be denied. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**