

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F513705

YERI GARCIA (DECD)	CLAIMANT
COAST TO COAST CARPORTS, INC.	NO. 1 RESPONDENT
AIG CLAIM SERVICES INSURANCE CARRIER	NO. 1 RESPONDENT
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	NO. 2 RESPONDENT

OPINION FILED NOVEMBER 8, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by KENNETH OLSEN, Attorney, Little Rock, Arkansas.

Respondents No. 1 represented by FRANK NEWELL, Attorney, Little Rock, Arkansas.

Respondent No. 2 represented by TERRY PENCE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 4, 2007, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on July 3, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. The respondents have paid funeral expenses.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's death.
2. Dependency of the claimant's mother and siblings.
3. Compensation rate.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that Rosa Becerra and Maria Garcia were dependent upon decedent Yeri Garcia when he was killed in the scope and course of his employment, and are entitled to workers' compensation benefits arising from his death.

In regard to the foregoing issues Respondents No. 1 contend that they initially accepted this claim as compensable and paid funeral benefits. Respondents No. 1 have controverted the claims of Rosa Becerra and Maria Garcia. Respondent carrier has controverted this claim. Decedent was not an employee of Coast to Coast Carports. Decedent was not an employee of an uninsured subcontractor. Decedent was an independent contractor.

In regard to the foregoing issues Respondent No. 2 contends that Respondents No. 1 have controverted the claims of Rosa Becerra and Maria Garcia. If the claimants are not entitled to survivor's benefits, the Death & Permanent Total Disability Trust Fund will not have liability in this case. Claimants cannot prove that Yeri (Jerry) Garcia was an employee of either Hilario Vasquez or Coast to Coast Carports and, therefore are not entitled to survivor's benefits; claimants cannot prove a "contract for hire" between Yeri

(Jerry) Garcia and either Hilario Vasquez or Coast to Coast Carports. Alternatively, if Yeri (Jerry) Garcia was an employee of Hilario Vasquez, claimants cannot establish an average weekly wage to any degree of specificity and, therefore, are not entitled to weekly benefits; or, alternatively, should be limited to a statutory percentage of the minimum \$20.00 per week as provided in Ark. Code Ann. §11-9-501(b) and Ark. Code Ann. §11-9-518(c); cannot prove that they were “wholly” dependent upon Yeri (Jerry) Garcia at the time of his death; cannot prove that they were “actually” dependent upon Yeri (Jerry) Garcia at the time of his death.

The documentary evidence consists of the Commission’s pre-hearing order marked Commission’s Exhibit No. 1. The claimant submitted the deposition of Hilario Vasquez marked Claimant’s Exhibit No. 1, and documentary evidence marked Claimant’s Exhibit No. 2. Respondents No. 1 submitted the deposition of Rosa Becerra marked Respondents No. 1's Exhibit No. 1, and the deposition of Maria Garcia marked Respondents No. 1's Exhibit. Respondent No. 2 submitted the resident card of the claimant marked Respondent No. 2's Exhibit No. 1. All these exhibits were admitted without objection. Objections have been raised to some of the claimant’s documentation specifically page 1, 2, 3 through 8, and pages 17 and 18 of Claimant’s Exhibit No. 2. The real estate lease which comprises pages 3 through 8 of the claimant’s documentary evidence Exhibit No. 2 are attached to one of the depositions, therefore they were deleted from the claimant’s documentary evidence. The affidavit from Hilario Vasquez and from Donna Sanchez and Jorge

Zavala were not admitted into evidence. Also a letter from Judy Young dated May 17, 2007, was not admitted as was Form 4 signed by Amber Low not admitted. Arguments of the parties were made prior to the ruling on these matters.

DISCUSSION

Rosa Becerra De Garcia testified that her son Yeri signed with her on their house lease because he knew everything about the house. Ms. Garcia testified that she has been living at this particular house for the past six years. Ms. Garcia testified that at the time the lease was signed she was not working and her husband had already returned to Mexico. Ms. Garcia testified that at the time that they moved into their house five of her sons and one daughter moved in. This witness testified that the claimant was one of the sons that moved in with her. Ms. Garcia testified that at the time they moved into their house the claimant was providing the income. Ms. Garcia testified that the gas, rent, lights, the claimant's truck payment, and food were all paid by the claimant. Ms. Garcia testified that she has one other son, Guadalupe Ceballos, who's father is Abel Ceballos who is the owner of the house where she lives. Ms. Garcia testified that she is Mr. Ceballos' girlfriend but pays him rent to live in the house. Ms. Garcia testified that Mr. Ceballos does not provide for any of her children but does provide for his son Guadalupe. Ms. Garcia testified that her son, the claimant, died on December 9, 2005. Ms. Garcia was asked who the claimant was working for and she responded, "Carports, Carports, Hilario Vasquez, how do you say?"

Ms. Garcia testified that the claimant began working for the respondent, Coast to Coast Carports, three years before his death. Ms. Garcia agreed that while working for the respondent they would travel out of state to work. Ms. Garcia further agreed that it was on one of these trips that the claimant was killed. Ms. Garcia testified that the claimant paid for everything from his earnings. Ms. Garcia testified that the claimant was not married and did not live anywhere except 708 Louise. Ms. Garcia testified that eventually she did begin working for Tyson earning \$7.85 per hour but currently is earning \$9.85 per hour. Ms. Garcia testified that she started to work for Tyson on October 13, 2005, agreeing that this was a couple of months before her son died. Ms. Garcia testified that the claimant continued to provide money for her as well as the rest of the family after she started working. Ms. Garcia testified that the claimant would give her \$180 per week for her personal needs and he would also hand her money for the things that they needed. This witness testified that the claimant continued to provide money to her after she began working for Tyson. Ms. Garcia testified that currently her daughter Maria is helping her a little bit financially. This witness testified that her husband does not provide any income to the family and the last money she received from him was March 31, 2001, in the amount of \$100.

On cross examination by Respondents No. 1, Ms. Garcia was shown a wage statement from Tyson which set forth that as of December 10, 2005, she had earned \$14,665.22. The witness was

asked if it was possible she began working for Tyson in April or May 2005 and the witness responded, "No." This witness agreed that her husband left for Mexico in the year 2001 and that Guadalupe Ceballos was born May 3, 2002. Ms. Garcia agreed that she works forty hours a week and that she pays a lady to watch her children for two hours after school. Ms. Garcia testified that on the days that the kids are out of school Mr. Ceballos looks after the children but she does not pay him. Ms. Garcia testified that the claimant paid the utilities in cash and she had to go with him to pay Mr. Ceballos the rent. This witness indicated that at the time of his death the claimant was buying a truck and that she is still paying for it. Ms. Garcia testified that part of the money which the claimant would give her would be to make his truck payment. Ms. Garcia agreed that her daughter Maria went to work in the middle of 2006 and that currently she is helping with the rent. Ms. Garcia testified that there have been times when she would sell tamales and sweet potato hot pockets to supplement their income.

On cross examination by Respondent No. 2, Ms. Garcia testified that currently she has five children in school the oldest being Cesar who is seventeen and in the tenth grade. Ms. Garcia agreed that the claimant was born December 14, 1986, and further testified that she remembers that he finished the sixth grade in school. Ms. Garcia testified that the claimant went to school as long as Cesar has gone to school indicating that the claimant had flunked. Ms. Garcia agreed that the claimant was born in 1986 and that in 2002 he would have been fifteen or fourteen. Ms. Garcia explained the

reason she had a fourteen or fifteen-year-old boy sign her house lease was because she did not have another male. Ms. Garcia testified that in 2002 she was still married to her husband Benjamin Garcia. Ms. Garcia testified that she has been to the respondent's office after her son's death to get the insurance number. Ms. Garcia agreed that she never saw anyone from the respondent's business pay the claimant but she did see Hilario pay the claimant. Ms. Garcia testified that when the claimant would return from work on the weekends, Hilario would come by and pay him. Ms. Garcia testified that the last time she had seen Hilario Vasquez was on July 27 at his deposition. Ms. Garcia testified that she knows where Mr. Vasquez lives but she did not ask him to come to this hearing. Ms. Garcia agreed that when the claimant was home he enjoyed the benefits of their home as well as her cooking. Ms. Garcia testified that the reason she did not begin work until October 2005 was because she did not have the proper papers. When asked what kind of papers she was referring to this witness responded, "Residency." Ms. Garcia testified that she got her residency papers through immigration and had applied for her residency papers in 1996. Ms. Garcia testified that she does not know why it took so long to get her residency papers but she does remember calling several times and was told to wait. Ms. Garcia testified that all of their family applied for their residency papers in 1996. Ms. Garcia was asked what the actual date she received permission to start working and this witness responded, "The 13th of October." Ms. Garcia was allowed to get her residency

papers and it was determined that the residency card indicates that she became a resident on August 17, 2005, and was then available to work. Ms. Garcia testified that she did not get the card, however, until October. Ms. Garcia agreed that the claimant's residency card has the same date of August 17, 2005, making him eligible for employment. After some discussion as to what the claimant's residency card set forth it was determined that Ms. Garcia does not read. Ms. Garcia testified that the claimant did not have a bank account nor was she aware of any bank account in Idaho. Ms. Garcia testified that at a previous job which the claimant had he was paid by a check and they did withholding.

On redirect examination, Ms. Garcia testified that Abel Ceballos and the claimant were friends but Mr. Ceballos did not give him money. Ms. Garcia testified that she was guessing in her earlier testimony of the age of the claimant when he quit school. Ms. Garcia testified that the claimant did not go to school in the year which he died. Ms. Garcia testified that they moved into the house on Louise Street in 2002 and that she was mistaken when she testified 2001 in her deposition.

On recross examination by Respondents No. 1, Ms. Garcia was asked about the hand writing on some of the documents at the end of her deposition and was this hand writing hers. Ms. Garcia testified that she does not know how to write so the writing could not be hers.

On recross examination by Respondent No. 2, Ms. Garcia testified that she and all of her family got their residency cards

at the same time. Ms. Garcia was asked why the claimant was working prior to getting his residency card and she responded that the respondent hires people without papers and pays them in cash.

In response to the Commission's questions, Ms. Garcia testified that when they moved into the house on Louise Street the claimant was going to school.

In Rosa Becerra Garcia's deposition taken on July 27, 2007, Ms. Garcia testified that her husband, Benjamin Garcia, has not supported her or the family since 2001. Ms. Garcia testified that she began living with Mr. Ceballos in 2002 after she had their child. Ms. Garcia testified that Mr. Ceballos does not financially support her or her other children but does support Guadalupe Ceballos who is his child. Ms. Garcia testified that Mr. Ceballos lives in the house with them but each of them have their own rooms and they are more like friends. Ms. Garcia testified that she began working on October 13, 2005, because that was when she got her proper papers. Ms. Garcia testified that after her husband left in 2001 the claimant who was very resourceful started to work to support the family. Ms. Garcia was asked if the claimant was her sole support from 2001 onward and this witness responded, "Yes. Yes." Ms. Garcia testified that she has not received financial support through the government such as food stamps. Ms. Garcia testified that she has been living at her current address for approximately five years. Ms. Garcia testified that she has been paying \$750 per month in rent and was paying this amount as of October 2005. Ms. Garcia testified that currently she is having to

pay for everything but that the claimant had given her money prior to his death. Ms. Garcia testified that the claimant would give her \$180 per week and he would get paid \$500 or sometimes even more and this was always paid to him in cash. Ms. Garcia testified that Hilario would pay him cash. Ms. Garcia testified that the utilities are in Mr. Ceballos' name but she pays them in cash. Ms. Garcia was asked when the claimant started working for the respondent and Ms. Garcia responded that he had worked with Junior for three years and he really liked the car deals. Ms. Garcia was asked if the claimant worked for anyone else other than the respondent in the year 2005 and Ms. Garcia responded, "No." Ms. Garcia was asked if the claimant worked for anyone other than the respondent in the year 2004 and Ms. Garcia responded that he worked in stools. Ms. Garcia was asked when the claimant worked for Greenville Tubbing and Ms. Garcia responded that she did not remember but that he worked more in the carports. Ms. Garcia testified that she and the claimant signed a real-estate lease dated June 1, 2000, between herself, the claimant, and Mr. Ceballos for the house at 708 Louise Street in Clarksville, Arkansas. It was pointed out to Ms. Garcia that the real-estate lease is dated June 1, 2000. Ms. Garcia testified that she and her family did not move until 2002. It was then pointed out to Ms. Garcia that if the lease had been signed in June 2000 the claimant would have been thirteen years old. After some discussion it was agreed that the signature page has no date filled in on the real-estate lease. Ms. Garcia was asked about Richard Vazquez. Ms. Garcia testified that

Richard is Hilario's brother and Richard worked with the claimant on the job in Arizona. Ms. Garcia testified that Richard Vazquez lives in Clarksville and she knows him personally. Ms. Garcia agreed that Richard Vazquez had given the police in Arizona a statement after the claimant's death that the claimant lived with her, his step father, and his brothers and sisters in Clarksville. Ms. Garcia was asked who the claimant's step father is and Ms. Garcia responded, "Abel Ceballos." Ms. Garcia was then asked if Mr. Ceballos contributed to the claimant's support in any way while she and he lived together. Ms. Garcia testified, "Yeah. He was really good with him." Ms. Garcia testified that the claimant had given her \$180 per week from the time he began working for the respondent three years prior to his death and she would use the money for his truck payment, bills, and whatever was needed. Ms. Garcia was asked if during the entire three years the claimant was working for the respondent was he doing jobs for Hilario. Ms. Garcia responded, "Yes. Yes. For Hilario." Ms. Garcia agreed that she had already testified that Abel Ceballos was a good man and helped support the claimant as well as herself and her daughter which was the case at the time of the claimant's death in December 2005. Ms. Garcia testified that the person she referred to as Junior was one and the same as Hilario Vazquez. Ms. Garcia was shown some documents and read from these documents which were described as a mortgage statement dealing with Mr. Ceballos' home. Ms. Garcia was told that the document sets forth that Mr. Ceballos pays \$427 per month for the home. Ms. Garcia testified that she

pays \$750 per month rent to Mr. Ceballos. Ms. Garcia testified, "But since he rented that for me, he said that he would pay that for me--for the family. I don't know how much he pays." Ms. Garcia testified that she pays Mr. Ceballos in cash each month. When asked Ms. Garcia testified that she cashes her Tyson check at Regions Bank through her son Benjamin's account. Ms. Garcia testified that at the time of the claimant's death she had begun working for Tyson, therefore she could then help pay the rent. Ms. Garcia testified that her daughter has now been working for about a year and helps her with some of the expenses.

On questioning by the claimant's attorney, Ms. Garcia testified that prior to his death the claimant paid for all of her expenses as well as that of the younger children. Ms. Garcia testified that the claimant and Mr. Ceballos were friends and they treated each other very well. Ms. Garcia agreed that the claimant quit school in 2002 when he went to work for the respondent. Ms. Garcia agreed again that up until the claimant's death he was paying money to support his brothers, sister and herself who were living in the home.

Respondents No. 1 asked a series of questions concerning the amounts of the utility bills and how the claimant would pay these monthly expenses. Ms. Garcia agreed that the claimant would give her \$200 a week for food. Ms. Garcia was asked how the claimant would get her money when he was working in Arizona and Ms. Garcia testified that the claimant did not send her a dime and that Junior told her that the money stayed in Arizona. Ms. Garcia was asked a

couple of times how the family would eat when they did not get money from the claimant and Ms. Garcia responded, "Because I was working."

Maria Garcia testified by deposition that she is not married but has had two children, one of them deceased. Ms. Garcia testified that her daughter's name is Ashley Flores and that this child's father is Hector Flores. Ms. Garcia testified that the child's father gives her \$40 per week for child support. Ms. Garcia testified that she works at Tyson and earns \$293 per week and has been working at this job for the past eleven months. Ms. Garcia testified that she did not know how much money the claimant earned but that he would give her \$80 each week when he would come home. Ms. Garcia testified that the claimant gave her this money beginning in 2002. Ms. Garcia testified that she did not work any in the year 2005 and that her job with Tyson is her first job. Ms. Garcia testified that the claimant was paying the bills and the rent.

On cross examination by Respondent No. 2, Ms. Garcia testified that Hector Flores is also the father of her deceased son Alexis. Ms. Garcia testified that Mr. Flores did not provide support while Alexis was alive but he is helping with Ashley. Ms. Garcia testified that she was born in Mexico but she has applied and received her residency papers. Ms. Garcia testified that currently she is helping her mother with expenses. Ms. Garcia testified that she started working for Tyson in the summer of 2006 after her son passed away so she could help take care of her daughter Ashley.

On examination by the claimant's attorney, Ms. Garcia testified that in 2002 while she was at home caring for her sick child her brother, the claimant, provided cloths for her children and herself. Ms. Garcia testified that in the year 2003, 2004, and 2005 the claimant continued with this support. Ms. Garcia testified that the claimant provided financial support for she and her children up to the time of his death.

Hilario Vazquez testified by deposition that he is employed by the respondent. Mr. Vazquez testified that the respondent would give the crews directions as to where to put up the aluminum structures. Mr. Vazquez testified that he got all of the orders and all the business from the respondent. Mr. Vazquez testified that he does not have a business of his own. Mr. Vazquez testified that Carports were the only kind of structure that the respondent puts up. This witness testified that he only worked for the respondent. Mr. Vazquez agreed that someone from the respondent's office would call each day and tell him where to go. Mr. Vazquez testified that he uses his own vehicle but that he would use materials furnished by the respondent which were loaded up onto his truck at the respondent's business. Mr. Vazquez testified that the respondent does have material shops scattered around the country so when they are not working in Arkansas they still can get supplies. Mr. Vazquez testified that most of their work was done in Arkansas but occasionally they would go out of state. Mr. Vazquez testified that when they put up a carport they will receive payment at that time and he then would give the check to the respondent. Mr.

Vazquez testified that he receives a percentage for each carport put up. Mr. Vazquez testified that payment for the constructed carports was made by check and these checks were made out to the respondent. Mr. Vazquez testified that he would pay the claimant in cash and that no taxes were withheld from the claimant's pay. Mr. Vazquez testified that he does not remember when the claimant began working for the respondent in 2005. Mr. Vazquez testified that no tax statement was sent to the claimant to aid him in paying taxes. Mr. Vazquez testified that the claimant only worked for the respondent a few months but had worked for the respondent at other times. Mr. Vazquez testified that he has known the claimant for a number of years in that they went to school together. Mr. Vazquez testified that the claimant would work with different crews but they all were working for the respondent. Mr. Vazquez estimated that the claimant would earn about \$500 to \$600 a week. When asked, Mr. Vazquez estimated that the highest the claimant might have earned in a week was \$800 and the lowest was more like \$400. Mr. Vazquez testified that his crew consisted of four people and all of these could fit into his truck. This witness testified that he had a trailer which hauled the materials. Mr. Vazquez testified that the money which he gave to the claimant the claimant would pay for his own expenses and help his mom. Mr. Vazquez testified that the claimant never told him what he did with his money. Mr. Vazquez testified that the claimant had a bank account at the West Fargo Bank in Idaho. Mr. Vazquez testified that the claimant was working with another crew that was working for the respondent when

this account was set up. Mr. Vazquez testified that the respondent would pay him by check and he would deposit his check and then pay the claimant in cash and this was the method that the different crews were paid. Mr. Vazquez then answered a series of questions dealing with the circumstances surrounding the claimant's death. Mr. Vazquez was asked if the claimant was a good worker and he responded, "Yes. He was a really good worker."

On examination by Respondent No. 2, Mr. Vazquez testified that one time he wrote a check to the claimant's father-in-law, Abel Ceballos, in lieu of paying the claimant. Mr. Vazquez testified that it was his understanding that Mr. Ceballos was in need of money and the claimant had told him that he would send money but instead of using a money gram or Western Union he had agreed to help the claimant out by writing him a check. Mr. Vazquez testified that he made a check out to Mr. Ceballos on behalf of the claimant. Mr. Vazquez testified that he does not have any documentation of this transaction nor does he recall when it happened.

On examination by Respondents No. 1, Mr. Vazquez testified that he took tools with him and that he directed the crew as to when to start work as well as when the day was over indicating that he was the boss on the crew. Mr. Vazquez testified that the boss at the respondent's business, George Zavala, told him that they had workers' compensation for every worker. Mr. Vazquez testified that it was his understanding that whatever happened on the job they were going to be covered. Mr. Vazquez testified that each day the

respondent would provide him with a list on a piece of paper as to where to go to construct the carports.

On examination by Respondent No. 2, Mr. Vazquez testified that when his crew would be working out of state he would have to wait to come back to the office in order to get paid so he then could pay his crew in cash. Mr. Vazquez was asked if anyone at the respondent's business had ever asked or advised him to obtain a certificate of non coverage through the workers' Compensation Commission and Mr. Vazquez responded, "No."

On cross examination by the claimant's attorney, Mr. Vazquez was asked if the owner of the business is named George Zavala and this witness responded, "Yes." Mr. Vazquez testified that the respondent would take out a percent of his earnings in order to cover workers' compensation for his crew. Mr. Vazquez testified that he then in turn would take a percent out of each of the crew member's check to cover this expense. Mr. Vazquez agreed that each worker carried or paid for their own insurance but that the respondent took care of the insurance.

After a review of all the testimony as well as the documentary evidence submitted in this matter, I find that it has been proven by a preponderance of the evidence that the claimant, Yeri Garcia, was employed by the respondent, Coast to Coast Carports, Inc., at the time of his death on December 9, 2005. Hilario Vazquez has testified that he was the claimant's supervisor and boss and they were employed by the respondent. Mr. Vazquez testified that the respondent would pay him by check and he would deposit his check

and then pay in cash the different members of his crew. Mr. Vazquez testified that the respondent directed where they did their business and provided materials for them to carry out their job. It also seems unlikely that a respondent would pay funeral expenses for a person who was not an employee. Based on the best evidence presented in this record as to the earnings of the claimant, I find that he earned on an average \$600 per week which would amount to approximately \$2400 per month for a four-week period. I further find that the claimant's relatives have failed to prove by a preponderance of the evidence that they were wholly and actually dependent upon him at the time of his death. Ms. Rosa Garcia, the claimant's mother, testified that she began working for Tyson in October 2005, however her payment sheet from Tyson indicates that she had earned for the year of 2005 \$14,665.22. The claimant has testified and Tyson payroll records indicate that the claimant was earning \$8.70 in 2005 and worked a forty-hour week would entitle her to a gross wage of \$348. Based on this gross wage divided into the amount of money she earned in 2005 would indicate that she had worked 42.14 weeks for Tyson. It is also noted that the expenses which Rosa Garcia testified that she paid each month or that the claimant paid each month for their living expenses came to a total of \$3,318.30 to include the \$80 per week which the claimant's sister testified that he gave her for the care of herself and her children. It has been found that the claimant averaged \$600 per week which based on a four-week period of time would equal \$2,400. Clearly the claimant did not earn enough to totally support his

mother and his siblings. It just does not seem likely that a woman and her family would be living in a house with her boyfriend who she had a child by and he would not contribute something to her and her children's upkeep. I do not doubt that the claimant did help his mother and sister at times but I do not find that they were wholly and actually dependant upon him at the time of his death. See Payne v. Superior Industries, AWCC claim No. E415136, Full Commission opinion 5-30-96. Also based on the evidence provided by Hilario Vazquez in his deposition, the claimant was performing employment services by helping drive the remainder of the crew back to their home location after being assigned to a job in Arizona when he was killed. Therefore, I find that the claimant's death was compensable.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. The respondents have paid funeral expenses.
3. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury resulting in death while working for the respondent on December 9, 2005. See discussion above.
4. The claimant has proven by a preponderance of the evidence that he was an employee of the respondent at the time of his death. See discussion above.
5. The claimant's mother and siblings have failed to prove by a preponderance of the evidence that they were wholly and actually

dependent on the claimant at the time of his death. See discussion above.

ORDER

The claimant has proven by a preponderance of the evidence that he was employed by the respondent at the time of his death on December 9, 2005.

It has been proven that the claimant sustained a compensable injury resulting in his death while working for the respondent on December 9, 2005.

The claimant's mother and siblings have failed to prove by a preponderance of the evidence that they were wholly and actually dependent on his income at the time of his death and should be entitled to survivor's benefits.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE