

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603546

TANYA JORDAN, WIDOW OF WILLIAM WARREN (BILL) JORDAN (Dec'd), EMPLOYEE	CLAIMANT
PEPSI AMERICAS, INC., EMPLOYER	RESPONDENT
OLD REPUBLIC INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION AND ORDER FILED APRIL 23, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on April 14, 2008, at Little Rock, Pulaski County, Arkansas.

Claimant appeared *pro se*.

Respondents #1 represented by Mr. Michael Lee Wright, Attorney-at-Law, Little Rock, Arkansas.

Respondent #2 deferred to the outcome of litigation and was excused from appearing.

STATEMENT OF THE CASE

A hearing was conducted April 14, 2008, to determine whether the Commission should approve a lump sum payment of her entitlement to her widow/dependency benefits.

A prehearing conference was conducted in this claim on March 26, 2008, and a Prehearing Order was filed on said date. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record herein.

It is undisputed that the decedent sustained work-related injuries on March

26, 2006, which resulted in his death; that his average weekly wage was \$821.00, entitling his widow to dependence benefits at the rate of \$287.00 per week; that respondents #1 had paid appropriate dependency benefits, to date; and that respondent #2 had issued a Certificate of Acceptance reflecting that it would initiate payment of its liability for dependency benefits on March 24, 2011, as long as the widow remained an eligible beneficiary.

Again, the sole issue presented for determination was whether the Commission should approve a lump sum payment pursuant to Ark. Code Ann. §11-9-804.

The decedent's widow, Tanya Jordan, was the only witness to testify at the April 14, 2008, hearing. The record is composed solely of the transcript of the hearing.

From a review of the record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The claimant has shown, by a preponderance of the evidence, that it would be in her best interest to receive a lump sum payment, discharging the liability of respondents #1 for compensation of weekly benefits to the widow upon payment of its statutory liability.
3. All parties agree that the discounted value of respondents #1's liability

to the claimant is \$27,412.30.

DISCUSSION

_____The claimant, Tanya Jordan, is the widow of William Warren Jordan. Mr. Jordan sustained a work-related injury which resulted in his death on March 26, 2006. The record reflects that respondents #1 exercised good faith in meeting its obligations under our workers' compensation laws by accepting the claim as compensable and paying all related death benefits. In fact, the record reflects that respondents #1 initially paid the widow dependency benefits at an erroneous compensation rate. Specifically, respondents #1 initially paid benefits at the rate of \$488.00 per week which is the maximum benefit allowable to all potential beneficiaries rather than \$287.00 per week which is the proper rate payable to the widow only, without dependent children. As will be set out further below, respondents #1, rather than suspend benefits entirely, has reduced the claimant's benefits incrementally in order to partially offset the total amount of overpayments, to date.

The claimant respectfully requested that the Commission approve the lump sum payment. She stated that she had a personal tax liability for the year 2005 of \$10,976.00 for which penalties would apply if not paid. Further, the claimant had outstanding medical expenses for personal health problems not covered by insurance of approximately \$10,000.00. The claimant stated that she was working and would be financially able to support herself if the aforementioned bills were paid

in full. The claimant offered documentary evidence in support of her request.

At the conclusion of the April 14, 2008, hearing, it was determined that it would be in the best interest of the decedent's widow to receive a lump sum payment. However, because the parties had not calculated the present value of the lump sum request to further consider the overpayment, the parties were directed to submit an agreement concerning the payments made, as well as the total amount of the lump sum owed, if approved.

Subsequent to the hearing, the parties submitted the following agreed facts:

Including the payment made by Respondents No. 1 on April 18, 2008, Respondents No. 1 have paid a total of \$36,938 in indemnity payments, including a \$5,655 overpayment. Although Respondents No. 1 have paid \$36,938 in indemnity payments, only \$31,283 in indemnity payments had actually accrued as of April 18, 2008, resulting in an unaccrued, remaining liability of \$43,717, or 152.3 weeks of indemnity payments at the rate of \$287 per week. Discounting \$43,717 at the rate of 10%, compounded annually, as provided in A.C.A. §11-9-804, equals \$33,067.30. Subtracting the total overpayment of \$5,655 from \$33,067.30 results in a lump sum payment of \$27,412.30 owed by Respondents No. 1 to Claimant's widow.

Accordingly, I hereby make the following:

AWARD

It is, therefore, ordered that the request for a lump sum payment be approved; that respondents #1 are ordered and directed to pay, to the claimant, \$27,412.30, which represents the remaining liability of respondents #1 for indemnity payments, with the appropriate discount as provided for A.C.A. §11-9-804(a)(1); and that respondent #2 will remain liable to begin payment of benefits on March 24,

2011, so long as claimant's widow remains eligible and respondents #1 provide proof to respondent #2 of its payment totaling \$64,350.30.

IT IS FURTHER ORDERED that upon payment of \$27,412.30 by respondents #1, the liability of respondents #1 for compensation for weekly benefits to the widow, claimant herein, shall be discharged.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge