

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508002

FRANCISCA GUEVARA RODRIGUEZ,
WIDOW AND GUARDIAN OF
EBER SUSTAITA GUEVARA,
MARLEN SUSTAITA GUEVARA, AND
ERENDRIA MAGALY SUSTAITA GUEVARA,
MINOR CHILDREN AND DEPENDENTS OF
MODESTO HERRERA (DEC'D.), EMPLOYEE CLAIMANT

BUSTER ROBERTS LOGGING, LLC, EMPLOYER RESPONDENT NO. 1

AMERICAN INTERSTATE INS. CO., CARRIER RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND RESPONDENT NO. 2

ORDER FILED JULY 10, 2006

Upon review before the FULL COMMISSION, Little Rock,
Pulaski County, Arkansas.

Claimant represented by the HONORABLE GARY DAVIS,
Attorney at Law, Little Rock, Arkansas.

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

Respondent No. 2 represented by the HONORABLE TERRY
PENCE, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter is currently before the Full
Workers' Compensation Commission on appeal from the
Administrative Law Judge's February 27, 2006, decision.
Upon review of that decision, we find that there is
insufficient evidence to render a finding as to who is

entitled to dependency benefits pursuant to Ark. Code Ann. §11-9-527(c).

Dependency is a question of fact to be determined in light of the surrounding circumstances. See, Robinson v. Ed Williams Constr. Co., 38 Ark. App. 90, 828 S.W.2d 860, See also, Doyle's Concrete Finishers v. Moppin, 268 Ark. 167, 594 S.W.2d 243 (1980). In reviewing the file, it is apparent that the present case is wrought with what appears to be fraud on the part of the deceased. This problem is compounded because most of the parties participating in the hearing either did not have first hand knowledge of the claimant's identity or had a direct interest in the outcome of the case. Because the Administrative Law Judge relied on the statements or testimony of those who were aware of the claimant's fraud, but took no action, and because the claimant had a history of using fraudulent identification, this is particularly troubling.

Additionally, the documents such as birth certificates and marriage licenses which are necessary in verifying the claimant's identity or in establishing dependency benefits were submitted in Spanish and were not certified or official, original copies. Likewise,

there was no verification by a disinterested party as to the relationship between the deceased and the parties alleging to be his children. We also note that there is no evidence as to whether any steps were taken to correct the death certificate nor was there any direct evidence to substantiate the claim that Francisco Javier Sustaita Herrera is alive. Last, we note that no documentation was provided to verify that Lavona Haury or Francisca Guevera Rodriguez received money from the claimant in order to establish dependency.

In the future, all documents shall be provided in English or be accompanied by an English interpretation prior to their submission to the Commission. We further request that affidavits or documents regarding identity be certified or original in order to establish authenticity.

Accordingly, we hereby vacate the February 27, 2006, decision and remand this case to the Administrative Law Judge in order to conduct further proceedings and take additional evidence regarding the identity of the deceased and the dependency of the interested parties has been submitted.

Herrera - F508002

4

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner