

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E004333

JOHN T. DOPIERALLA (Deceased), EMPLOYEE	CLAIMANT
GENERAL MOTORS ACCEPTANCE CORP., EMPLOYER	RESPONDENT NO. 1
ROYAL INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED JANUARY 11, 2008

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

Claimant appears pro se.

Respondents 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.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the  
Administrative Law Judge filed November 9, 2006. In  
said order, the Administrative Law Judge made the  
following 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 provided 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 the 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.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore we affirm and adopt the November 9, 2006 decision of the Administrative Law Judge, including all

findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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MIKE WILSON, Special Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant did not have a dependant wife or children at the time of injury, and therefore, the claimant's wife and children are not entitled to dependency benefits or funeral expenses. This case comes before the Commission on the claimant's appeal of a decision issued November 9, 2006. At the time of the previous hearing, the parties sought to determine whether the parties requesting dependency benefits could be considered eligible beneficiaries pursuant to Ark. Code Ann. §11-9-527. The PreHearing Order also set forth that the issue of entitlement to funeral expenses was to be determined.

The Majority, by affirming the Administrative Law Judge's opinion, found that the eligibility of

benefits would have been determined at the time of the compensable injury on February 2, 1990. Accordingly, the Majority is denying dependency benefits to the deceased claimant's wife and two children. Furthermore, the issue of funeral expenses has not been addressed.

Based upon a de novo review of the record in its entirety, I find that the parties are essentially seeking an advisory opinion, as they have not litigated the issue of whether the claimant's death was caused by the compensable injury, thus becoming a compensable consequence of the injury. As the receipt of either funeral or dependency benefits is dependent on this issue, and the parties have not stipulated that the claimant's injury caused his death, I do not believe that the issue presented has been settled by the record. Therefore, I must respectfully dissent.

The facts in the case are not in dispute and the case was submitted for a hearing on the record in lieu of a hearing before the Administrative Law Judge. The parties made the following stipulations,

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.

The claimant's widow brings this claim seeking dependency for herself and the claimant's children. The claimant died as a result of what the claimant contends was an accidental drug overdose. As the claimant's death is most likely a compensable consequence of his compensable injury, I find that dependency benefits should be determined as of the time of death. The purpose and intent of Ark. Code Ann. §11-9-527 is to compensate dependents of a worker who dies as a result of a work-related injury. Alternatively, the provisions of Ark. Code Ann. §11-9-527 does not limit payment of benefits only to those categories listed in the statute. Finally, as dependency need not be shown for funeral expenses to be awarded, the Majority erred in not addressing and therefore denying payment of funeral expenses.

The Majority finds that Ark. Code Ann. §11-9-527 defines the determination of dependency to be the

date of injury and therefore, since the claimant was not married and did not have children at the time of injury, no dependency benefits are owed. They further appear to find that the legislature did not intend to compensate workers that were dependent on disability benefits due to a compensable injury. Finally, they seem to conclude that the admission that the claimant died as a result of his compensable injury, or that the parties bringing suit are dependents, are only admissions for the sole purpose of the issue of when the legal date of dependency should arise.

After reviewing the record and applicable case law, I find that the issues before the Commission have not been settled by the record, and therefore should be remanded to the Administrative Law Judge for determination. In order to make a decision as to whether the respondent employer is liable for either funeral expenses or for dependency benefits, the issue of whether the death was a compensable consequence of the admittedly compensable injury must first be addressed. When reviewing the language of Ark. Code Ann §11-9-527, it is apparent that the only time funeral expenses or dependency benefits are to be awarded is in the event that the claimant's death is due to the

compensable injury. No such determination or agreement has been entered as to this issue.

In this instance, the respondent-employer only makes concessions regarding this issue for the purpose of determining what date the claimant's dependency benefits would be determined. While that is certainly a question that would be proper for consideration if it is shown the claimant's death occurred due to the admittedly compensable injury, there is no such finding on that issue. In fact, it is evident when one reviews the documents in the file, that the respondents do not believe the claimant's compensable injury was in any way related to his death. Rather, they believe that the claimant's injury was due to a suicide. Therefore, if the Majority had entered an award in favor of the claimant in this instance, it is likely that more litigation would ensue.

Alternatively, even if the issue had been settled by the record for the Commission to consider, the Majority erred in determining that the claimant did not have a dependant wife or children at the time of injury, and therefore, the claimant's wife and children are not entitled to dependency benefits. The Courts have previously acknowledged that "time of injury" & "time of

accident" are not synonymous. The terms "time of injury" and "time of accident" are not synonymous; while an injury may result from an accident, an accident may or may not result in an injury. Haygood Limited Part v. Whisenant, 74 Ark. App. 185, 47 S.W.3d 277 (2001) citing Donaldson v. Calvert McBride Ptg. Co., 217 Ark. 625, 232 S.W.2d 651 (1950). Typically, this analysis has been used with reference to statute of limitations.

Specifically, the Courts have previously indicated that the statute of limitations for a compensable injury would not begin to run until the claimant learns the extent of his injuries and is off work for a period of time that entitles him to benefits for a compensable injury. Calion Lumber Co. v. Goff, 14 Ark. App. 18, 684 S.W. 2d 272 (1985).

I find that, in this instance, because the claimant sustained a compensable consequence injury, in the form of death, as a result of his accident, the time of his injury should be the date that the extent of his injury or in this instance, death occurred. In fact, it was stipulated that in this instance the claimant was deemed to be permanently and totally disabled as of June 2003. As such, it is apparent that the claimant's true loss of wages and compensation was not determinable

until 2003. By that time, the claimant was already married and accordingly, his wife should be entitled to dependency benefits.

The date of injury should be determined as of the date of death. To rule otherwise would circumvent the reason for the existence of dependency benefits- which is to compensate the injured workers' dependents for loss of monetary support due to a compensable injury. As such, even if the issue of dependency had been settled in the record, the Majority erred in its application of the law.

Even though the Majority finds that dependency benefits are to be determined at the date of the injury, we still have to address the issue of the claimant's entitlement to funeral expenses. The Majority does not address the issue of funeral expenses, and therefore I can only assume that funeral expenses have been denied. If the claimant's compensable injury caused his death, his survivors would still be entitled to payment of funeral expenses, regardless of the issue of entitlement to dependency benefits. In my opinion to now allow the parties to skirt the issue of whether the claimant's death was a compensable consequence of the compensable injury is to encourage piecemeal litigation and to allow

other parties to request advisory opinions in the future. Therefore, the issue has not been settled by the record and should have been remanded to the Administrative Law Judge for a hearing on the merits.

Alternatively, Ark. Code Ann. §11-9-527(a) provides, in pertinent part,

(a) FUNERAL EXPENSES. If death results from an injury occurring on or after July 1, 1993, the employer shall pay the actual funeral expenses, not exceeding the sum of six thousand dollars (\$6,000).

Noticeably absent from the language in the aforementioned statute is any language to indicate that the claimant need show that he has dependents in order to have his funeral expenses paid.

I note that the Commission is required under the provisions of Ark. Code Ann. § 11-9-704(c) (3) to strictly construe statutes. In Lawhon Farm Services v. Brown, 335 Ark. 272, 984 S.W.2d 1 (1998), the Supreme Court stated:

Strict construction means narrow construction. In Arkansas Conference Seventh Day Adventists v. Benton City Board of Equalization, 304 Ark. 95, 800 S.W.2d 426 (1990), and Thomas v. State, 315 Ark. 79, 864 S.W.2d 835 (1993), we wrote that strict construction requires that nothing be taken as intended that is not clearly expressed. The doctrine

of strict construction is to use the plain meaning of the language employed. Holaday v. Fraker, 323 Ark. 552, 915 S.W.2d 280 (1996). Even when statutes are to be strictly construed, however, they must be construed in their entirety, harmonizing each subsection where possible. MenArk Pallett Co. v. Lindsey, 558 Ark. App. 309, 950 S.W.2d 468 (1997).

Accordingly, I find that the respondent should be liable for payment of funeral expenses due to the claimant's compensable death.

As such, I find that the issue of dependency benefits and funeral expenses has not been settled by the record and should have been remanded to the Administrative Law Judge. Alternatively, since the Majority has determined that the issues have been settled in the record and therefore denied dependency benefits and funeral expenses, I find that the Majority has erred.

For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner