

NOT DESIGNATED FOR PUBLICATION

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	CLAIMANTS NO. 1
LAVONA KAY HAURY, WIDOW OF FRANCISCO JAVIER SUSTAITA, DECEASED EMPLOYEE	CLAIMANT NO. 2
BUSTER ROBERTS LOGGING, LLC, EMPLOYER	RESPONDENT NO. 1
AMERICAN INTERSTATE INS. CO., INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED APRIL 22, 2008

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

Claimants No. 1 represented by the HONORABLE GARY DAVIS,
Attorney at Law, Little Rock, Arkansas.

Claimant No. 2 represented by the HONORABLE ORVIN W.
FOSTER, Attorney at Law, Mena, Arkansas.

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

Respondent No. 2 represented by the HONORABLE JUDY RUDD,
Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed October 4, 2007. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. A person died on December 9, 2004.
3. The respondents have not paid any dependency death benefits to date except that the respondents did initiate fatality death benefits and paid for a period of five weeks to Lavona Haury until a dispute arose as to the identity of the deceased employee and his dependents.
4. The decedent earned an average weekly wage of \$500.
5. If Lavona K. Haury is found to be the legal widow of the decedent, Lavona K. Haury was wholly and actually dependent upon the decedent within the meaning of the Arkansas Workers' Compensation Law.
6. The decedent's true identity is Modesto Sustaita Herrera.
7. The decedent married Francisca Guevara Rodriguez on July 6, 1986, and had four children with Francisca.
8. The decedent was still married to Francisca Guevara Rodriguez when the decedent married Lavona Kay Haury on June 6, 2000; Lavona Kay Haury was therefore not the decedent's legal wife and is not a proper party to receive

dependency benefits under the Arkansas Workers' Compensation Law in this claim.

9. Francisca Guevara Rodriguez was the legal wife of the decedent on the date of his injury.
10. Francisca Guevara Rodriguez was not financially dependent on the decedent, in whole or in part, at the time of his accident and death; Francisca Guevara Rodriguez is therefore not entitled to receive dependency benefits under the Arkansas Workers' Compensation Law in this claim.
11. Eber Sustaita Guevara, Marlen Sustaita Guevara, and Erendria Magaly Sustaita Guevara were minor children of the decedent at the time of his accident and death; these three claimants are proper parties entitled to receive dependency benefits under the Arkansas Workers' Compensation Law in this claim.
12. The decedent was an employee of Buster Roberts Logging, as the term "employee" is defined in Arkansas Code Annotated § 11-9-102(9)(A) (Repl. 2002), notwithstanding that the claimant was working in this country under a false identity and another individual's Social Security number.
13. Federal law does not pre-empt an award of dependency benefits in this claim.
14. Respondent No. 1 and Respondent No. 2 have both controverted the claim for benefits awarded herein.

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. Furthermore, we note that Ark. Code Ann. §11-9-111 has been considered in our review of this case and is not a bar to the children's receipt of dependency benefits. Accordingly, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the October 4, 2007, decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the

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amount of \$500.00 in accordance with Ark. Code Ann. §
11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney concurs.