

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VANESSA BRUSS, surviving spouse of
NEIL BRUSS,

Claimant,

vs.

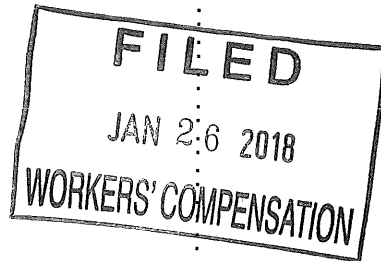
GROUT SCOUTS, INC.,

Employer,

and

ACCIDENT FUND INSURANCE
COMPANY OF AMERICA,

Insurance Carrier,
Defendants.



File No. 5065045

ARBITRATION
DECISION

Head Note No.: 1805

STATEMENT OF THE CASE

Vanessa Bruss, claimant, filed a petition in arbitration and seeks workers' compensation benefits from defendants, Grout Scouts, Inc., as the employer and Accident Fund Insurance Company of America, as the insurance carrier. Ms. Bruss is the surviving spouse of Neil Bruss.

This case was scheduled for trial on January 25, 2018. On January 19, 2018, the parties contacted the undersigned and notified the agency that a live hearing was not necessary in this case. The parties noted their preference that the case be submitted on a written record. The undersigned accepted the parties' waiver of a live evidentiary hearing.

On January 24, 2018, the parties filed Joint Exhibits 1 through 4. Those exhibits are received and constitute the extent of the evidentiary record before this agency. The evidentiary record closed upon receipt of the joint exhibits.

However, the undersigned asked the party to provide a hearing report with specification of any disputes, weekly rate issues, and clarification of whether any other dependents exist. The parties complied with the undersigned's directive and filed a hearing report on January 25, 2018.

Review of the hearing report demonstrates that the parties have entered into numerous stipulations, establishing liability for the death claim surrounding Neil Bruss's February 27, 2017 work injuries. All of the parties' stipulations are accepted. The parties identify no factual or legal disputed issues for resolution.

ISSUES

1. Whether Vanessa Bruss is entitled to death benefits resulting from the work injuries of her husband, Neil Bruss, on February 27, 2017.

FINDINGS OF FACT

Having reviewed the parties' hearing report and accepted the parties' stipulations, the following facts are found to be undisputed:

Neil Bruss was an employee of Grout Scouts, Inc., on February 27, 2017. Mr. Bruss sustained a work injury that arose out of and in the course of his employment with Grout Scouts, Inc. on February 27, 2017. (Hearing report) As a result of his work injury, Mr. Bruss died. (Joint Exhibits 1-3)

Mr. Bruss earned \$1,335.73 per week before his work injury. Vanessa Bruss is the wife and sole dependent of Mr. Bruss. Neil and Vanessa Bruss were married at the time Mr. Bruss was injured and died.

Defendants have paid \$39,334.32 in weekly benefits since the date of Mr. Bruss's death. There are no disputes about entitlement to credit for these benefits paid, for past medical expenses, or funeral expenses.

CONCLUSIONS OF LAW

Pursuant to Iowa Code section 85.31(1), when a death occurs as a result of a work injury, the employer shall pay the dependent of the injured worker death benefits equivalent to 80 percent of deceased worker's average weekly spendable earnings. Death benefits are payable to a surviving spouse for life if the spouse remains unmarried. However, if the surviving spouse remarries, death benefits are only payable for a period of two years after the spouse remarries, payable in a lump sum. Iowa Code section 85.31(1)(a)(1).

In this instance, the parties stipulate that there are no other dependents. The parties stipulate to facts that demonstrate the death claim is compensable. Therefore, I conclude that Vanessa Bruss is entitled to payment of death benefits commencing on the date of Neil Bruss's death, February 27, 2017, and continuing in accordance with the provisions of Iowa Code section 85.31(1)(a)(1).

The weekly benefit amount payable to an employee shall be based upon 80 percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to 66-2/3 percent of the statewide average weekly wage paid employees as determined by the Department of Workforce Development. Iowa Code section 85.37.

The weekly benefit amount is determined under the above Code section by referring to the Iowa Workers' Compensation Manual in effect on the applicable injury date. Pursuant to the parties' stipulations, claimant was married, entitled to two exemptions and had a gross average weekly wage of \$1,335.73 on the date of injury. Using the Iowa Workers' Compensation Manual (p. 99) with effective dates of July 1, 2016 through June 30, 2017, I confirmed the parties' asserted applicable weekly rate of \$823.84. Iowa Code section 85.31(1); Iowa Code section 85.36; Iowa Code section 85.37.

ORDER

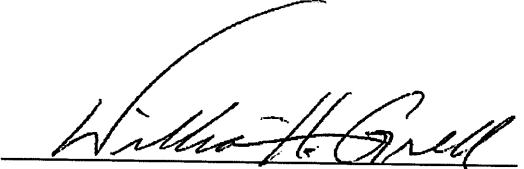
THEREFORE, IT IS ORDERED:

The parties' stipulations are accepted and the parties are bound by their stipulations.

Defendants shall pay Vanessa Bruss death benefits in the amount of eight hundred twenty-three and 84/100 dollars (\$823.84) per week commencing on February 27, 2017 and payable until Vanessa Bruss's death or, upon her remarriage, defendants shall pay two years' worth of benefits in lump sum, all as required by and set forth in Iowa Code section 85.31(1)(a)(1).

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 26th day of January, 2018.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/kjw

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.