

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROGER BLASDELL, surviving spouse
of Heather Blasdell,

Claimant,

vs.

LINNHAVEN, INC.,

Employer,

and

ACCIDENT FUND NATIONAL
INSURANCE COMPANY/UNITED
HEARTLAND,

Insurance Carrier,
Defendants.

File No. 5044236

APPEAL DECISION

Head Note No: 1805

STATEMENT OF THE CASE

Claimant, Roger Blasdell ("Roger"), appeals from an arbitration decision filed August 6, 2019, and a rehearing decision regarding demeanor filed July 24, 2020.

This case was initially heard by Deputy Workers' Compensation Commissioner, Erica Fitch, on May 15, 2018. Deputy Fitch was taken off regular deputy work, including hearings, to work full time in the development and implementation of the paperless workers' compensation electronic system (WCES). Due to Deputy Fitch's unavailability, this case was delegated to Deputy Workers' Compensation Commissioner Stephanie Copley on July 12, 2019. Deputy Copley issued an arbitration decision on August 6, 2019. She issued a rehearing decision regarding demeanor on July 24, 2020.

The detailed arguments of the parties have been considered, and their record of the evidence has been reviewed de novo. Upon written delegation of authority by the Workers' Compensation Commissioner under Iowa Code section 86.13, I rendered this decision as a final agency decision on the behalf of the Iowa Workers' Compensation Commission.

ISSUES

1. Was the demeanor hearing an adequate remedy?

2. Are defendants precluded from claiming Roger is not Heather Blasdell's ("Heather") dependent in the claim for death benefits?
3. Should Roger receive death benefits from Heather under Iowa Code section 85.31(1)(a)(1)?
4. Is Roger barred from receiving death benefits based upon Heather's alleged suicide under Iowa Code section 85.16(1)?
5. Rate.

FINDINGS OF FACT

Heather had a work-related injury on November 5, 2012, when she was hit with a grocery cart on the right heel. In the December 12, 2014 arbitration decision, it was found that Heather had a physical and mental injury. The decision found Heather was permanently and totally disabled. (Blasdell v. Linnhaven, Inc., file no. 5044236 (Arb. December 12, 2014) At the hearing, the parties stipulated Heather was married and entitled to three exemptions for her rate. Roger did not testify at that hearing, nor was he present at the hearing. (Hearing Transcript, p. 33) The decision was affirmed on appeal.

On September 9, 2016, Heather was found dead. Heather's death was caused by an overdose of prescribed medications. (Joint Exhibit 2, p. 2) The officer responding to Heather's death concluded the death was due to an accidental overdose or a successful suicide. (JE 2, p. 4)

Roger testified he married Heather in August of 2008. (Hr. Tr., p. 11; JE 3, p. 10) He said they separated in January 2011. (Hr. Tr., p. 11) Roger said their separation occurred for financial reasons after Heather lost her job. As a result, Roger and Heather were not able to pay for a home in Delhi, Iowa. Heather initially moved to Clinton, Iowa, and Roger moved to Manchester, Iowa. (Hr. Tr., pp. 12-13)

Either at the time of separation or shortly thereafter, Roger began a relationship with another woman named Angela Lee. (JE 6, p. 2) According to an investigative report, Ms. Lee and Roger ended that relationship in March of 2017. (JE 3, p. 5)

In a 2011 W4 form, Roger listed himself as single. (Hr. Tr., pp. 23-24; Ex. E, p. 3) Roger also identified himself as single in a 2015 W4 form. (Hr. Tr., p. 24)

In his 2011 and 2012 taxes, Roger filed as married filing separately. (Hr. Tr., p. 29; JE 4, pp. 1, 3, 5, 7) In his 2012 Iowa return, Roger did not list Heather as a spouse. (Ex. C, p. 1)

Roger testified he gave Heather \$50.00 to \$100.00 weekly. He said she occasionally repaid him back the money. Roger had no records of these transactions. (Hr. Tr., pp. 15-16, 26, 28)

Austen Burrige testified he is Heather's son. Mr. Burrige said that Roger and Heather spoke on a consistent basis to ". . . see how everybody was doing." (Hr. Tr., p. 35)

A private investigator was hired by defendant-insurer. According to the investigator report, Ms. Lee indicated Roger was constantly unable to contact Heather to coordinate anything. (JE 3, p. 5)

In her deposition, taken on January 24, 2014, before the underlying arbitration hearing, Heather testified she had been separated for three years from Roger. (Ex. A, p. 3; Depo p. 6) Heather testified she had not officially divorced from Roger due to financial reasons. Id. At that time Heather testified Roger did not pay any support for Austen. Id.

CONCLUSION OF LAW

The first issue to be determined is whether the demeanor hearing is an adequate remedy for claimant.

As detailed above, and in other rulings in this case, Deputy Workers' Compensation Commissioner Fitch heard this matter on May 15, 2018. Deputy Fitch was taken off of all regular duties, including hearings, to work full time on the development and implementation of the WCES. Deputy Fitch was unavailable under Iowa Code section 17A.15(2).

On July 12, 2019, due to Deputy Fitch's unavailability, Deputy Commissioner Copley was appointed to make the findings of fact and a proposed decision in this case.

Claimant did not object to that delegation. Claimant did not file a petition for judicial review under Iowa Code section 86.26(1) or move for interlocutory appeal.

On August 6, 2019, an arbitration decision was issued by Deputy Copley. That decision found Roger was not entitled to death benefits.

Claimant did not object, upon issuance of the decision, to the delegation of authority. Claimant did not file a petition for judicial review under Iowa Code section 86.26(2) or an interlocutory appeal regarding the delegation.

On November 13, 2019, claimant filed his appeal brief. Approximately 125 days after the delegation of authority was issued, claimant, for the first time, argued that the delegation was improper and that claimant's demeanor was a substantial issue in this case.

Claimant waived his opportunity to raise either issue. However, in an effort to maintain the integrity of the contested case proceeding, the agency granted claimant an opportunity to have a second “demeanor” hearing as detailed under Iowa Code section 17A.15(2).

At the request of claimant, a hearing assignment order was issued on May 29, 2020, for a demeanor hearing to be held on July 20, 2020.

Claimant requested the demeanor hearing. Claimant did not object to the demeanor hearing. Claimant did not argue, at the July 20, 2020 hearing, that the demeanor hearing was an inadequate remedy. Given this record, it is found that claimant has waived this argument and is therefore precluded from now arguing the demeanor hearing was an inadequate remedy.

Delegation was proper under Iowa Code section 17A.15(2) in this case. Claimant initially waived the issue that demeanor was a substantial factor in this case. Demeanor has been found not to be a substantial factor in the underlying hearing. Claimant has failed to show how his case has been prejudiced, in light of the fact that he has already had two hearings for one claim. Given this record, and the other facts as detailed above, it is found the demeanor hearing was a proper remedy for claimant.

The next issue to be determined is whether defendants are precluded from claiming Roger is not Heather’s dependent in the claim for death benefits.

Claimant asserts that the doctrine of res judicata (specifically issue preclusion) and judicial estoppel bars defendants from raising the issue of whether Roger was a surviving spouse.

The doctrine of judicial estoppel “prohibits a party who has successfully and unequivocally asserted a position in one proceeding from asserting an inconsistent position in a subsequent proceeding.” Wilson v. Liberty Mutual Group, 666 N.W.2d 163, 166 (Iowa 2003) (quoting Vennerberg Farms, Inc. v. IGF Ins. Co., 405 N.W.2d 810, 814 (Iowa 1987)). It is intended to prevent “deliberately inconsistent—and potentially misleading—assertions from being successfully urged in succeeding tribunals.” Id. Judicial estoppel applies only when the position asserted by a party was material to the holding in the prior litigation. Tyson Foods, Inc. v. Hedlund, 740 N.W.2d 192, 198 (Iowa 2007) (emphasis added). “Absent judicial acceptance of the inconsistent position, application of the rule is unwarranted because no risk of inconsistent, misleading results exists.” Id. (quoting Vennerberg, 405 N.W.2d at 814).

The doctrine of res judicata includes both claim preclusion and issue preclusion. Winnebago Industries, Inc. v. Haverly, 727 N.W.2d 567, 571 (Iowa 2006). Principles of res judicata are applicable to administrative decisions. Bd. of

Sup'rs. Carroll Cty. v. Chi. & N.W. Transp. Co., 260 N.W.2d 813, (Iowa 1977). Under issue preclusion, once a court has decided an issue of fact or law necessary to its judgment, the same issue cannot be re-litigated in later proceedings. The doctrine of issue preclusion applies if:

1. The issue determined in the prior action is identical to the present issue;
2. The issue was raised and litigated in prior action;
3. The issue was material and relevant to the disposition and the prior actions;
4. The determination made of the issue in the prior action was necessary and essential to the resulting judgment.

Winnebago Industries, Inc. v. Haverly, 727 N.W.2d at 571-572 (Iowa 2006).

Regarding judicial estoppel, in the December 2014 arbitration decision, the issues in dispute were whether the injury resulted in a temporary disability, the extent of claimant's permanent disability regarding the 2012 injury, payment of past medical expenses, penalty and costs. Heather's stipulation regarding her marital status was not material to any of these issues. None of the findings of facts or conclusion of law in the 2014 arbitration decision were based on claimant's stipulations regarding marital status or the exemptions. Heather's stipulations regarding marital status played no role in the findings of fact and conclusion of the law in the December 2014 arbitration decision. Hedlund, 740 N.W.2d, 192, 198. Given these facts, judicial estoppel does not pertain to the stipulation regarding Heather's marital status in December 2014 arbitration decision and does not bar defendants from raising marital status in this matter.

Regarding res judicata, as it pertains to issue preclusion, Heather's marital status was not an issue that was raised and litigated in the December 2014 arbitration hearing. Because Heather's marital status was not an issue raised and litigated in the December 2014 arbitration hearing, the doctrine of res judicata does not apply and does not bar defendants from raising Roger's marital status in the case at issue.

In brief, doctrines of judicial estoppel and res judicata do not bar defendants from raising issue of Roger's marital status as an issue in this case.

The next issue to be determined is did Roger willfully desert Heather under Iowa Code section 85.42(1).

Iowa Code section 85.31(1)(a)(1) indicates, in relevant part that:

When death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of the injury . . . as follows:

- (1) To the surviving spouse for life or until remarriage . . .

Iowa Code section 85.42(1)(A) states:

The following shall be conclusively presumed to be wholly dependent upon the deceased employee:

1. The surviving spouse with the following exceptions:
2. A. When it is shown that at the time of injury the surviving spouse had willfully deserted the deceased without fault of the deceased, then the surviving spouse shall not be considered as dependent in any degree.

As noted in the arbitration decision, there is little case or agency law discussing willful desertion under Iowa Code 85.42(1)(a). In James Black Dry Goods v. Iowa Industrial Commissioner, 186 Iowa 657, 173 N.W. 23 (Iowa 1919), the Iowa Supreme Court found that the deceased wife had not deserted her husband prior to death. In Black, the court determined that the cessation of a marriage relationship, the intent to desert, and the absence of consent or misconduct of the party alleging to have deserted, were necessary to constitute desertion under the statute. Black, 186 Iowa 657, 664, 173 N.W. 23, 24.

As noted above, Iowa Code section 85.31(1)(a)(1) indicates that the employer shall pay the dependents who are wholly dependent on the earnings of the employee for the support at the time of injury. In Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 337 (Iowa 2008) the Iowa Supreme Court noted that:

The goal of statutory construction is to determine legislative intent. We determine legislative intent from the words chosen by the legislature, not what it should or might have said. Absent a statutory definition or an established meaning in the law, words in the statute are given their ordinary and common meaning by considering the context within which they are used. Under the guise of construction, an interpreting body may not extend, enlarge or otherwise change the meaning of a statute.

The ordinary and common meaning of the term "at the time of injury" should be read to mean at Heather's November 5, 2012 date of injury.

I understand and respect the deputy's interpretation of the term "at the time of injury" to mean at the time of the death of the employee. I also appreciate that the use of the term "at the time of injury" could lead to absurd results. However, the ordinary and plain language meaning of the term "at the time of injury" should be read to mean the time of Heather's injury in November 2012.

The next issue to be determined is did Roger desert Heather as of November 5, 2012.

The record indicates that Roger and Heather intended to terminate their marriage relationship in January 2011. The record indicates Heather moved out of the house she shared with Roger at that time. Shortly after that in early 2011, Roger began a relationship with Ms. Lee. This was a relationship that lasted at least five years and included several years of cohabitation. The record reflects that after January 2011, Roger and Heather never lived together or had any sexual relationship. Given this record, it is found that Heather and Roger ended their marital relationship in January 2011. It is also found that Roger willfully and intentionally separated from Heather at that time.

As noted in the record, the separation between Heather and Roger occurred due to financial reasons. Given this fact, it is found that Roger's willful separation from Heather was without the fault of Heather.

Assuming for argument's sake it is found that Roger did not willfully desert Heather, he would still fail to qualify for benefits under Iowa Code section 85.31(1)(a)(1). As noted, the statute obligates the employer to pay ". . . the dependents who are **wholly dependent** on the earnings of the employee for support at the time of injury . . ." (emphasis added)

The record indicates that any dependency Roger might have had on Heather's earnings ended in January 2011. The record indicates that Heather occasionally gave Roger money, but this only occurred a few times a year and that the amounts were usually approximately \$30.00. There is no evidence that Roger received any earnings from Heather after January 2011. There is no evidence that Roger received any of Heather's workers' compensation benefits. Given this record, Roger has failed to carry his burden of proof that he is a dependent who is "wholly dependent" on the earnings of Heather for support at the time of the November 2012 date of injury.

Roger and Heather separated in January 2011. Roger lived with another woman from approximately 2011 to 2017. Roger indicated that on at least two W4 forms he was single. Roger filed two tax returns indicating he was married but separated. An Iowa return filed in 2011 suggested Roger was single. Roger did not appear at the underlying arbitration hearing. There is no documentation in the record, other than Roger's own testimony, that he supported Heather. There is no evidence in the record Heather supported Roger after January 2011. There is no evidence in the record that Roger was wholly dependent on the earnings of Heather after January 2011. Heather died by either an overdose or suicide on September 6, 2016. In February 2017, Roger filed a petition seeking death benefits. Given this record, and the other facts as detailed above, Roger has failed to carry his burden of proof he is entitled to benefits under Iowa Code section 85.31(1)(a)(1).

As Roger has failed to carry his burden of proof he is entitled to benefits under Iowa Code section 85.31(1)(a)(1), all other issues are moot.

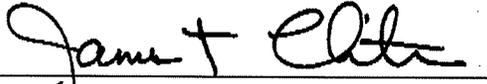
ORDER

Therefore, it is ordered:

Roger Blasdell, surviving spouse of Heather Blasdell, shall take nothing from these proceedings.

All parties shall bear their own costs.

Signed and filed this 8th day of June, 2021.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Laura Ostrander (via WCES)