

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

REMAND DECISION

Headnote: 1805

STATEMENT OF THE CASE

This matter is before the Iowa Workers' Compensation Commissioner on remand from the Iowa Supreme Court from a decision dated April 7, 2023.

The arbitration decision was initially heard in this matter on October 7, 2014. That decision found claimant Heather Blasdell (Heather) was permanently and totally disabled and was entitled to permanent total disability benefits. That decision was affirmed in a May 2016 appeal decision.

On September 9, 2016, Heather died as a result of an overdose of prescription medication. Roger Blasdell (Roger) filed a claim for death benefits as Heather's surviving spouse.

This case was initially heard by Deputy Worker's 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 implement 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.

Deputy Copley's arbitration decision found Roger willfully deserted Heather as of 2016. Based on statutory language under Iowa Code section 85.42(1)(a), the decision found that Roger was not entitled to death benefits. That decision was affirmed on intra-agency appeal.

Roger filed an appeal and application for judicial review in district court. In the ruling on the petition for judicial review, the district court overturned the commissioner's determination Roger abandoned Heather. The district court also remanded the case back to the commission to determine whether the willful injury exception applied under Iowa Code section 85.31(1)(a).

Defendants appealed the district court decision. In a July 20, 2022 decision, the Iowa Court of Appeals affirmed the decision of the district court. Defendants filed an application for further review. In an April 7, 2023, decision, the Iowa Supreme Court affirmed the decision of the Iowa Court of Appeals and the district court.

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. Whether Heather Blasdell's death was a result of a willful intent to injure herself, thus barring a claim for benefits under Iowa Code section 85.16(1)(a).
2. Rate.
3. Costs.

FINDINGS OF FACT

The findings of fact in the arbitration and the appeal decision adequately detail the record in this case. The findings of fact in this remand decision will only address facts relevant to the issues on remand.

As noted, Heather died as a result of an overdose of prescription medication on September 9, 2016.

Prior to her death, Heather received counseling for mental health issues. Records from July 2015 assess Heather as having a major depressive disorder. Heather was noted to have ". . . suicidal thoughts, but no plans or intent." (Joint Exhibit 1, p. 16) Counseling records from July of 2015 indicate Heather had suicidal ideations several times a week, but no plans or intent. (JE 1, p. 17) Counseling records from August 2015 also indicate Heather had suicidal ideations, but no plans or intent. (JE 1, p. 18)

Counseling records from July 29, 2016, note that Heather was a moderate suicide risk. (JE 1, p. 12) This concern was repeated in counseling records dated August 26, 2016. (JE 1, p. 13)

Austen Burrige testified he is Heather's son. He said that he was the one who found his mother on the date of death. Mr. Burrige testified Heather's emotional state was good prior to her death. He testified he did not believe Heather committed suicide but had an accidental overdose. (Transcript pages 37-38)

Roger testified at hearing that he did not believe Heather committed suicide but had an accidental overdose. (Tr., p. 31)

A police investigation indicated Heather had a history of suicide attempts and was "... recently hospitalized for an attempt." (JE 2, p. 3) The officer spoke with Mr. Burrige and a friend. Both indicated that Heather would routinely take excessive amounts of prescribed medication to get "high," and that Heather appeared "high" when they spoke with her around 4:00 AM the morning of her death. (JE 2, p. 3)

The officer found a note in a stack of paperwork on Heather's bed. The note was undated. The note indicated "... I am a fucking loser [sic] and waist [sic] of oxygen." It appears to ask her son Austen and a person named "Steve" to keep her "fur babies." (JE 2, p. 5) The police report concluded, "It appears that Heather either had an accidental overdose on two different types of medication or a successful suicide attempt" (JE 2, p. 4)

An autopsy report found the cause of death as "mixed drug intoxication." (JE 1, p. 2) The cause of death was "undetermined." (JE 1, p. 6)

Heather's cause of death found in her death certification was "undetermined." (JE 3, p. 12)

CONCLUSION OF LAW

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 85.16(1), states, in pertinent part: No compensation under this chapter shall be allowed for an injury caused: (1) By the employee's willful intent to injure the employee's self or to willfully injure another.

Defendants bear the burden of proof to show the affirmative defense that Heather committed suicide, and thus bars Roger from receiving benefits under Iowa Code section 85.16(1).

No expert has opined that Heather committed suicide. The police investigation indicates Heather's death was caused by an accidental overdose or suicide. The autopsy report found that the cause of death was undetermined. The death certificate also found that the cause of death was undetermined. The police report noted that Mr. Burrige and a friend believed Heather took excessive amounts of medication to get

high. Mr. Burrige and Roger both testified at hearing they believed that Heather's death was an accidental overdose.

Given this record, defendants have failed to carry their burden of proof that Heather's death was a suicide, and thus Roger is entitled to death benefits by application of Iowa Code section 85.16(1).

I do recognize that counseling records made prior to Heather's death referred to her as a "moderate" risk for suicide. I also recognize the note, referenced in the police report, could be construed to be a suicide note. However, the note is undated and there is no evidence if it was written the day before death, or written months or even years prior to death. No expert has opined Heather committed suicide. Records indicate the death was either accidental or undetermined. For these reasons, as detailed above, defendants have failed to carry their burden of proof that Heather's death was a suicide under Iowa Code section 85.16(1).

RATE

The next issue to be determined is rate.

The number of exemptions used to determine rate are the exemptions an employee could claim on her tax returns. Iowa Code section 85.61(6)(a) and (b). Tax records are good evidence of marital status and entitlement to exemptions. DeRaad v. Fred's Plumbing and Heating, File No. 1134532 (App. Dec. January 16, 2002); Rhodes v. Torgerson Construction Company, File No. 1012085 (App. Dec. January 31, 1995).

Defendants stipulated, in the initial arbitration hearing, Heather was entitled to three exemptions. They now dispute that stipulation and contend Heather was only entitled to two exemptions. Defendants bear the burden of proof to change the stipulation.

The record indicates that while Roger and Heather were separated, they were still legally married.

At the time of the 2018 hearing, defendants appeared to argue that because Roger filed separately from Heather in his 2012 and 2013 taxes, the rate that should be calculated would be as if Roger and Heather were not married. (Defendants' Post-Hearing Brief, page 4)

Defendants also appear to contend that because Roger indicated that he was single on W-4 forms from 2011 and 2015, the rate should be calculated as if Heather was single with two exemptions. (Defendants' Post-Hearing Brief, pp. 5, 13)

The record indicates that while Heather and Roger were separated, they were still legally married. While I appreciate defendants' argument regarding Roger's tax records, the rate in this case is not determined or based on Roger's tax records. There

is no evidence in the record regarding what Heather's tax records were between 2011 and the date of her death.

Defendants stipulated at the 2014 hearing that Heather's rate should be determined as married with three exemptions. Heather and Roger were still married on the date of Heather's death. There is no evidence in the record regarding Heather's taxes between 2011 and the date of death. Given this record, defendants have failed to carry their burden of proof, that the rate, in this case, should be changed from the agreed to rate from the 2014 hearing.

ORDER

Therefore it is ordered:

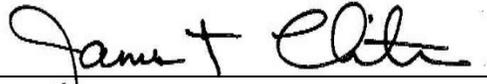
That defendants shall pay death benefits to the surviving spouse, Roger Blasdell. The death benefits shall be paid at the stipulated amount of four hundred eight and 46/100 dollars (\$408.46) per week.

That benefits shall continue during such time as Roger Blasdell is eligible for these benefits under Iowa Code section 85.31(1)(a)(1).

That defendants shall pay costs.

That defendants shall file subsequent reports of injury as required by this agency under Rule 876 IAC 3.1(2).

Signed and filed this 19th day of July, 2023.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Laura Ostrander (via WCES)