

ORDER

Injury No.: 08-020637

Employee: Robert B. Absher
Employer: T & T Contractors, Inc.
Insurer: Uninsured
Additional Party: Treasurer of Missouri as Custodian of
Second Injury Fund

On May 19, 2009, the administrative law judge issued an award in the above-referenced matter. The administrative law judge found that the employer is subject to the Workers' Compensation Act and that employer's liability is uninsured. On June 5, 2009, employer filed an Application for Review pursuant to section 287.480.2 RSMo.

Section 287.480.2 RSMo, provides, in part:

An employer who has been determined by the division to be an employer subject to and operating pursuant to this chapter and has also been determined to be uninsured may file an application for review but such application for review shall be accompanied with and attached to the application for review a bond which shall be conditioned for the satisfaction of the award in full...No appeal to the commission shall be considered filed unless accompanied by such bond...

Commission Regulation 8 CSR 20-3.070, provides, in part:

(1) Any uninsured employer subject to the Worker's Compensation Act as determined by the division must file a certificate of surety or other document issued by a bank, savings and loan institution or an insurance company licensed to do business in Missouri, establishing that the employer has a bond which will satisfy the award in full with its application for review. If no bond accompanies the application for review, the application for review will be returned to the employer as if never filed. The time limit for appeal to the commission shall continue to run and will not be tolled by the filing of an application for review without bond.

Employer does not allege that its liability is insured. Employer did not file proof that it has a bond as required by the statute and regulation. Pursuant to § 287.480.2 RSMo, the Commission has no jurisdiction to consider the Application for Review because the Application for Review is not considered filed. Further, pursuant to the above-cited

Employee: Robert B. Absher

regulation, the Application for Review is a nullity. In accordance with the regulation, we return the Application for Review to employer as if it had never been filed.

Given at Jefferson City, State of Missouri, this 16th day of June 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD ON AGREED STATEMENT OF FACTS

(To be used in fatal cases only.)

Employee: Daniel W. Bowles Injury No.: 06-000810

Dependents: Brooke Elaine Bowles and Colby James Bowles

Employer: Maryville Country Club

Insurer: Missouri Employers Mutual Insurance Company

Date of Accident: January 11, 2006

Place and County of Accident: Andrew County, Missouri Checked by: RBM

Date of Agreed Statement of Facts: July 18, 2006 Date of Death: January 11, 2006

The above parties having submitted an agreed statement of facts for consideration for compensation for the death of the above employee to the undersigned Administrative Law Judge of the Division of Workers' Compensation, and after fully considering the same, the undersigned hereby finds and awards compensation for said accident in favor of the following dependents of said employee and against the said employer and insurer as provided in the Missouri Workers' Compensation Law, as follows:

For Medical Aid the sum of \$ N/A.

For Burial Expenses the sum of \$5,000 (which has been paid by Employer/Insurer).

For Death Benefits the sum of \$386.10 per week to be apportioned as follows:

To Brooke Elaine Bowles, widow of Daniel W. Bowles, the sum of \$257.40 per week, subject to modification as provided by law, and

To Colby James Bowles, son and minor dependent of Daniel W. Bowles, the sum of \$128.70 per week, subject to modification as provided by law. The share of Colby James Bowles of \$128.70 per week is hereby ordered to be paid to Brooke Elaine Bowles, mother of Colby James Bowles, to be used solely for said minor child's support, maintenance, and education pursuant to Section 287.240(5), RSMo.

Each of said payments to begin on January 11, 2006 and to be payable and be subject to modification and review as provided in said Law.

Attached hereto are the findings of Fact and Rulings of Law made in connection herewith.

Employee: Daniel W. Bowles Injury No.: 06-000810
Dependents: Brooke Elaine Bowles and Colby James Bowles
Employer: Maryville Country Club
Insurer: Missouri Employers Mutual Insurance Company
Date of Accident: January 11, 2006
Place and County of Accident: Andrew County, Missouri Checked by: RBM
Date of Agreed Statement of Facts: July 18, 2006 Date of Death: January 11, 2006

FINDINGS OF FACT AND RULINGS OF LAW

1. Was there an accident? Yes.
2. Date: January 11, 2006.
3. Place: Andrew County, Missouri.
4. Was above Employee in employ of above Employer at time of accident? Yes.
5. Did accident arise out of and in the course of employment? Yes.
6. At time of accident had Employer elected to accept the Law? Yes.
7. At the time of accident had Employee elected to accept the Law? Yes.
8. Was Claim for Compensation filed within time required by Law? No claim was filed.
9. What part of Employer's compensation liability for accident is insured by above insurer?
All.
10. Work employee was doing and how accident happened: Employee, while acting within the scope and course of his employment for Employer, was involved in a motor vehicle accident causing multiple head and chest trauma, which resulted in death.

11. Did accident cause death? Yes. (If so, see findings 26 and 27.)
12. Parts of body injured by accident: Body as a whole.
13. Exact nature of any permanent injury: Injury resulted in death.
- 13(a) Healing period: N/A
14. Temporary total disability to date: N/A
15. Probable in future: N/A
16. Temporary partial disability to date: N/A.
17. Probable in future: N/A
18. Employee's average weekly wages: \$579.14
19. Weekly compensation: \$386.10
20. Method wage computation: Section 287.250 (RSMo. 2005) - pursuant to agreement of the parties.

COMPENSATION PAYABLE

21. Value necessary medical aid not furnished by Employer or Insurer: None. (Burial expenses have been previously furnished and paid in the sum of \$5,000.00 by the Employer and Insurer.)
22. Amount of compensation payable: \$386.10 per week from January 11, 2006 (subject to a credit for compensation of \$10,038.60 paid by Employer/Insurer) until further order and modification as provided in The Missouri Workers' Compensation Law.
23. Compensation paid to date by Employer or Insurer: \$10,038.60 as of July 11, 2006.
24. Balance payable to Employee or Defendants: \$386.10 per week, which is apportioned two-thirds (or \$257.40 per week) to widow, Brooke Elaine Bowles, and one-third (or \$128.70 per week) to dependent minor child, Colby James Bowles.
25. Probable future requirements: N/A.

26. Date of Death: January 11, 2006.

27. Employee's Dependents:

<u>Name</u>	<u>Date of Birth</u>	<u>SSN</u>	<u>Relationship to Employee</u>	<u>Extent of Dependency</u>
Brooke Elaine Bowles		499-92-5481	Wife	Fully Dependent
Colby James Bowles	February 4, 2005	487-23-6836	Son	Fully Dependent

PRELIMINARIES

On July 18, 2006, Brooke Elaine Bowles, widow of Daniel W. Bowles, and natural mother and natural guardian of dependent, Colby James Bowles, ("Dependents"), Employer, Maryville Country Club, ("Employer"), and its Insurer, Missouri Employers Mutual Insurance Company ("Insurer") appeared for a hearing for an Award on an Agreed Statement of Facts in St. Joseph, Missouri. Employer/Insurer appeared by and through their counsel, Brian N. Brown. Brooke Elaine Bowles appeared in person. Employer/Insurer presented the following exhibits, all of which were admitted without objection:

Exhibit 1 - Proposed Award on Agreed Statement of Facts.

Exhibit 2 - Death Certificate - Daniel Wayne Bowles.

Exhibit 3 - Coroner's Report - Daniel W. Bowles.

Exhibit 4 - Marriage License.

Exhibit 5 - Birth Certificate - Colby James Bowles.

Exhibit 6 - Claims Payments Printout.

Exhibit 7 - Wage Statement.

Exhibit 8 - 1/26/06 Letter from MEMIC to Brooke Bowles.

Exhibit 9 - Photocopy of three Social Security Cards.

STIPULATIONS

The parties stipulated and agreed that:

1. On or about January 11, 2006, Daniel W. Bowles, while an employee of Maryville Country Club, sustained an accident arising out of and in the course of his employment in Andrew County, Missouri and that said accident resulted in his death on that date.
2. Both the Employee and the Employer were operating and subject to the Missouri Workers' Compensation Law and that all liability under said law was fully insured by Missouri Employers' Mutual Insurance Company.
3. No medical expenses were incurred and none were paid as a result of the accident.
4. The burial expense allowance of \$5,000 was paid by the Employer/Insurer.
5. The rate of compensation in this case is \$386.10 per week.
6. As of July 11, 2006, compensation had been paid by the Employer/Insurer in the amount of \$10,038.60 representing death benefits for twenty-six weeks at the rate of \$386.10 per week.
7. Brooke Elaine Bowles was the dependent widow at the time of the Employee's death.
8. The minor child, being Colby James Bowles, was the only minor dependent child of Employee, Daniel W. Bowles, who is entitled to compensation under the provisions of Missouri Workers' Compensation Law in this case.
9. The widow, Brooke Elaine Bowles, should be apportioned two-thirds of the \$386.10 per week benefit, or the sum of \$257.40 per week, and the minor child, Colby James Bowles, named above, should be apportioned one-third of said \$386.10 per week benefit, or the sum of \$128.70 per week, as his share of the \$386.10 per week benefit, subject to modification as allowed by law, with the compensation being awarded for the minor child to be made payable to Brooke Elaine Bowles, his mother and natural guardian to be used solely for his maintenance, education and support pursuant to Section 287.240(5), RSMo. Said payments shall be made bi-weekly in the amount of \$772.20.

ADDITIONAL FINDINGS OF FACT

The Administrative Law Judge of the Division of Workers' Compensation (hereinafter "the Court") finds that the deceased, Daniel W. Bowles, died on January 11, 2006, leaving surviving his widow, Brooke Elaine Bowles, Social Security Number 499-92-5481, and their dependent child, Colby James Bowles, Social Security Number 487-23-6836, born February 4, 2005. The Court finds that said widow and minor child are total dependents of Daniel W. Bowles, deceased. The Court further finds that Daniel W. Boles had no other dependent minor children and no other dependents entitled to benefits under the Missouri Workers' Compensation Law on the date of his death.

Pursuant to Section 287.240, RSMo., the Court hereby apportions the death benefit of \$386.10 per weeks as follows: To Brooke Elaine Bowles, widow of Daniel A. Bowles, two-thirds, or \$257.40 per week, and to Colby James Bowles, minor dependent child of Daniel W. Bowles, one-third, or \$128.70 per week. The share of the death benefit apportioned to the minor child, Colby James Bowles shall be paid to Brooke Elaine Bowles, his natural mother and natural guardian, to be used solely for said minor child's support, maintenance, and education pursuant to Section 287.240(5), RSMo. Each of said payments shall begin on January 11, 2006.

The Court further finds that the parties have asked the Administrative Law Judge to approve this Agreed Award.

The Court further finds that Brooke Elaine Bowles has requested that the Employer/Insurer pay the weekly death benefits to her bi-weekly, rather than weekly, payable \$772.20 as paid bi-weekly. The Court hereby authorizes Employer/Insurer to make payments of the death benefits payable pursuant to this Award on Agreed Statement of Facts to Brooke Elaine Bowles bi-weekly in the amount of \$772.20.

The Court further finds that the parties understand that the death benefits payable pursuant to these Finds of Facts and Award on Agreed Statement of Facts are subject to modification and review as provided by applicable law.

The Transcript of Proceedings in this matter held on July 18, 2006 with exhibits is incorporated herein by reference.

Given at the City of Jefferson, State of Missouri, this 19 day of October, 2006.

/s/ Robert B. Miner
Robert B. Miner,
Administrative Law Judge

A true copy.

Attest:

/s/ Patricia "Pat" Secrest
Patricia "Pat" Secrest, Director
Missouri Division of Workers' Compensation