

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 04-072386

Employee: Chris A. Hanneken, deceased
Dependent: Madelynn Christine Hanneken, dependent daughter
Employer: Storage USA
Insurer: Federal Insurance Company
Date of Accident: June 2, 2004
Place and County of Accident: St. Charles County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated March 16, 2007. The award and decision of Administrative Law Judge Kevin Dinwiddie, issued March 16, 2007, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 23rd day of July 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Chris A. Hanneken (deceased)

Injury No. 04-072386

Dependents: Madelynn Christine Hanneken

Employer: Storage USA

Additional Party: n/a

Insurer: Federal Insurance Company

Hearing Date: January 8, 2007; finally submitted 1/29/07

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: KD/lsn

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: 6/02/04
5. State location where accident occurred or occupational disease was contracted: St. Charles County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee suffered a fatal gunshot wound to the head while at work
12. Did accident or occupational disease cause death? Yes Date of death? 6/02/04
13. Part(s) of body injured by accident or occupational disease: head injury resulted in death
14. Nature and extent of any permanent disability: See award
15. Compensation paid to-date for temporary disability: n/a
16. Value necessary medical aid paid to date by employer/insurer? n/a
17. Value necessary medical aid not furnished by employer/insurer? n/a
18. Employee's average weekly wages: \$423.00
19. Weekly compensation rate: \$282.06
20. Method wages computation: by agreement of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable: Death benefit payable to presumed total dependent, Madelynn Christine Hanneken, in the amount of \$282.06 per week, from 12/28/04 to the date of hearing in this matter, 1/08/07, and continuing thereafter for so long as the claimant is entitled under the provisions of Section 287.240 RSMo.

The death benefit is ordered to be paid to Ms. Amanda Lewis, the mother of Madelynn Christine Hanneken, for the support, maintenance, and education of

the claimant per Section 287.240(5) RSMo, such order subject to modification as provided for by law

22. Second Injury Fund liability: n/a

TOTAL: UNDETERMINED

23. Future requirements awarded: See award

Said payments to begin as of the date of this award and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Donald L. Kohl

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Chris A. Hanneken (deceased)

Injury No: 04-072386

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Dependents: Madelynn Christine Hanneken

Employer: Storage USA

Additional Party n/a

Insurer: Federal Insurance Company

Checked by: KD/lsn

The claimant, Madelynn Christine Hanneken, alleges to be a dependent entitled to death benefits following the work related death of Chris A. Hanneken. The parties stipulated at hearing that while in the employment of Storage USA, Chris A. Hanneken suffered a compensable injury by accident on the 2nd day of June, 2004, resulting in his death. The only issue to be resolved at hearing concerns whether Madelynn Hanneken qualifies as a dependent entitled to death benefits under the Chapter 287 RSMo, otherwise known as "The Workers' Compensation Law".

The employer/insurer and the alleged dependent appeared at hearing by and through their counsel. Ms. Amanda Lewis appeared in her capacity as the mother of the claimant, testified on her daughter's behalf, and was the only witness to appear and testify at the hearing. The employer and insurer submitted the testimony of Gary White by his affidavit.

EXHIBITS

The following exhibits are in evidence:

Claimant's Exhibits

- A. Certified business records of Paternity Testing Corporation
- B. Certificate of Death
- C. Birth Certification of Madelynn Christine Hanneken

Employer and Insurer's Exhibits

1. Affidavit of Gary White
2. Wage records
3. Storage USA New Hire form

The parties further stipulated to the findings as contained in the paternity testing within Exhibit A.

FINDINGS OF FACT AND RULINGS OF LAW

Ms. Amanda Lewis testified in a generally credible manner, and her testimony is found to be worthy of belief. Ms. Lewis and the deceased, Chris A. Hanneken, met in October of 2003. The relationship became intimate in November of 2003. In January of 2004 Ms. Hanneken began living with Mr. Hanneken in an apartment he leased. At the time, Ms. Lewis was working two jobs, substitute teaching and working nights at Tucker's Restaurant. Ms. Lewis acknowledges that while sharing the apartment the two continued to pay their own bills, but would share groceries.

On May 24, 2004, Ms. Lewis discovered that she was pregnant. She advised Mr. Hanneken that same evening. The testimony by affidavit of Mr. Gary White persuades that Mr. Hanneken was hired by Storage USA on 5/06/04 to manage one of its facilities, but that he did not begin working until 5/19/04. On 6/02/04, just nine or so days after learning of the involved pregnancy, Mr. Hanneken suffered a fatal gunshot wound to the head while at work.

Amanda Lewis gave birth to her daughter, Madelynn Christine Hanneken, on 12/28/04. Medical information available to Ms. Lewis revealed that the baby had been a fetus in utero for from four to six weeks as of the date of Mr. Hanneken's death. Mr. Hanneken and Ms. Lewis were never married, and Ms. Lewis acknowledged at hearing that as of the time of death, there was no court order obligating Mr. Hanneken to provide support for Madelynn, nor had any paternity testing been performed.

Subsequent to her daughter's birth, Ms. Lewis sought and received permission to have DNA sampling made available for paternity testing to determine the probability that Mr. Hanneken was the father of Madelynn Christine. The involved testing revealed the probability of paternity to be 99.999% (See Claimant's Exhibit A).

Ms. Lewis currently lives with her only child, Madelynn, and with certain other family members in Imperial, Missouri. As of the date of hearing in this matter, Ms. Lewis was employed at St. Louis Children's Hospital, where she works as a teacher in the Child Development Center.

DEPENDENCY AND ENTITLEMENT TO DEATH BENEFITS UNDER THE ACT

Madelynn Christine Hanneken is the only claimant asserting an entitlement to a benefit in this matter. The relevant sections of the involved statute, Section 287.240 RSMo, provide for a death benefit for the dependents of those who suffer an injury that causes death. "Dependent" is defined in paragraph (4) of Section 287.240 as follows:

The word "dependent" as used in this chapter shall be construed to mean a relative by blood or marriage of a deceased employee, who is actually dependent for support, in whole or in part, upon his or her wages at the time of the injury. The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee, and any death benefit shall be payable to them to the exclusion of other total dependents:

Section 287.240(4)(b) goes on to identify the following as presumed total dependents:

A natural, **posthumous**, or adopted child or children, **whether legitimate or illegitimate**, under the age of eighteen years, or over that age if physically or mentally incapacitated from wage earning, **upon the parent legally liable for the support or with whom he, she, or they are living at the time of the death of the parent**. In case there is a

wife or a husband mentally or physically incapacitated from wage earning, dependent upon a wife or husband, and a child or more than one child thus dependent, the death benefit shall be divided among them in such proportion as may be determined by the commission after considering their ages and other facts bearing on the dependency. In all other cases questions of total or partial dependency shall be determined in accordance with the facts at the time of the injury, and in such other cases if there is more than one person wholly dependent the death benefit shall be divided equally among them. The payment of death benefits to a child or other dependent as provided in this paragraph shall cease when the dependent dies, attains the age of eighteen years, or becomes physically and mentally capable of wage earning over that age, or until twenty-two years of age if the child of the deceased is in attendance and remains as a full-time student in any accredited educational institution, or if at eighteen years of age the dependent child is a member of the armed forces of the United States on active duty; provided, however, that such dependent child shall be entitled to compensation during four years of full-time attendance at a fully accredited educational institution to commence prior to twenty-three years of age and immediately upon cessation of his active duty in the armed forces, unless there are other total dependents entitled to the death benefit under this chapter; (emphasis added)

The statute reveals the intention to include as presumed total dependents both legitimate or illegitimate children fathered by the deceased but who are born after the father's death. Treating a "posthumous child" as a dependent has a long history, as noted by the Supreme Court of Alaska in S.L.W. v Alaska Workmens' Compensation Board, 490 P.2d 42, 46, (Alaska 1971) where the Court notes:

Once it is perceived that an illegitimate can qualify as a 'posthumous child', the dependency problem presents little difficulty. For it is an old rule that a child en ventre sa mere will be considered a child in esse, if it is for his benefit, and he may thereby rank as a dependent. McLain v. Howald, 120 Mich. 274, 79 N.W. 182 (1899); King v. Peninsular Portland Cement Co., 216 Mich. 335, 185 N.W. 858, 860 (1921).

It is comforting to find that England, the cradle of the common law, has long employed this rule in workmen's compensation cases, and holds that posthumous illegitimate children are dependent as a matter of law. Williams v. Ocean Coal Co., (1907) 2 K.B. (Eng.) 422; Orrell Colliery Co.v. Schofield, (1909) A.C. (Eng.) 433. These cases are discussed in La Blue v. Specker, supra, 100 N.W.2d at 448, 358 Mich. 558.

Actually it is hard to conceive of a person more totally dependent upon his parents than one who has not yet been born. Unlike a child of tender years, he lacks the capacity to look for help from other sources in the event that his parents fail him. While in the womb he has only the potentiality, not yet the ability, of becoming either an abandoned child or a street arab.

The claimant is obliged to establish that she is a relative of the deceased by blood or marriage. The Division of Workers' Compensation can not determine paternity; the Uniform Parentage Act provides the exclusive means of determining paternity. Poole Truck Lines, Inc. v. Coates, 833 S.W.2d 876, 978-79 (Mo.App. E.D. 1992); see also Snead by Snead v. Cordes by Golding, 811 S.W.2d 391, 395-96 (Mo.App. W.D. 1991).

Section 210.822.1(4) of the UPA provides that a man can be presumed to be the natural father of a child if an expert concludes that the blood tests show that the alleged parent is not excluded and that the probability of paternity is ninety-eight percent or higher. The parties stipulated to the results of the blood testing as contained in Claimant's Exhibit A, which show a probability of paternity sufficient to establish a presumption of paternity under the UPA. Chris A. Hanneken is presumed to be the natural father of the claimant, Madelynn Christine Hanneken. Every parent has a legal obligation to provide for his or her children, and proof of the relationship of parent to minor child is sufficient to establish prima facie basis for a legal obligation of support. State v. Morovitz, 867 S.W.2d 506, 508 (Mo banc 1994). Further, there is precedent, applicable to claims under Section 287.240 RSMo, for establishment of paternity post the death of the employee, Mayer v. Mayer, 40 S.W. 3d 925 (Mo.App. E.D. 2001).

The employer and insurer argue that notwithstanding the relationship of father and daughter in this matter, the wording of the statute precludes Madelynn Christine Hanneken from qualifying as a presumed total dependent. The employer does not rely on an ambiguity as to the meaning of any particular word or words, but rather relies on a literal interpretation of the plain meaning of the statute to conclude that the claimant fails to satisfy either of two conditions precedent for a child to qualify as a presumed total dependent. The employer interprets the statutory phrase "A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of eighteen years, or over that age if physically or mentally incapacitated from wage earning, upon the parent legally liable for the support or with whom he, she, or they are living at the time of the death of the parent" as requiring that Madelynn show either that she lived with the deceased at the time of death, or that as of the date of death the deceased was legally liable for her support. Employer argues that an unborn child is incapable of fulfilling either of the conditions precedent, and for that reason a posthumous child would be precluded from being found a presumptive total dependent in any case.

The interpretation advanced by the employer would render the reference to "posthumous child" a nullity, and yet every part of a statute is presumed to have some effect, and not be treated as meaningless unless absolutely necessary. Raven Coal Corp. v. Absher, 153 Va. 332, 149 S.E. 541 (1929). The primary rule of statutory construction is to ascertain the legislature's intent from the language used and give effect to that intent if possible. Murray v. Missouri Highway and Transp. Comm'n, 37 S.W.3d 228, 233 (Mo. banc 2001). The words used should be considered in their plain and ordinary meaning. Id. "Statutes should be construed in such a way as to avoid unreasonable, oppressive or absurd results." Lincoln County Stone Co., Inc. v. Koenig, 21 S.W.3d 142, 146 (Mo.App. E.D.2000). The entire legislative act must be construed together, and if reasonably possible, all provisions must be harmonized. Id. The legislature is

not presumed to have intended a meaningless act. [Murray, 37 S.W.3d at 233](#).

The relevant statutory provisions have not always existed in the form in which they are currently promulgated. Section 3709 RSMo 1939, prior to its revision in 1943, did not include the phrase making a child a total dependent of “the parent legally liable for such support”. If a child did not live with the deceased at the time of death, the child was not a presumed total dependent, and was obliged to make proof as to dependency. [Masters v. Southwestern Greyhound Lines, Inc.](#), 205 S.W.2d 882, 885-86 (Mo.App 1947). The precursors to Section 287.240 RSMo identified posthumous children as presumed total dependents, but also required that the claimant be living with the deceased at the time of death. It would be absurd to suppose that the legislature intended for that phrase to apply to posthumous children, as opposed to children born as of the date of the death of the deceased, for a posthumous child by definition could never be “living with the deceased”. In order to avoid an absurd and meaningless result, and given the historical rationale and significance of supposing the fetus in utero to be dependent as a matter of law, any reference as to “living with the deceased” should not be interpreted to apply to posthumous children.

Likewise, the phrase “of the parent legally liable for such support” should not be construed as a barrier to deny the posthumous child the opportunity to establish paternity, and consequently, an entitlement to a death benefit under the law. Clearly, the case law supports the conclusion that the legislative change in 1943 to include the reference to “a parent legally liable for support” was not intended to narrow the application of the law, but rather was an attempt to expand its application and avoid unjust results. [Masters](#), 205 S.W.2d 885-886.

From all of the evidence, the claimant, Madelynn Christine Hanneken is found to be the natural child of Amanda Lewis, the mother, and of Chris A. Hanneken, the father. Madelynn Christine Hanneken is found to be a presumed total dependent of the deceased, and entitled to a death benefit as provided for in Section 287.240 (4) (b) RSMo.

Madelynn Christine Hanneken was born on 12/28/04 (See Birth Certification, Claimant’s Exhibit C). A death benefit in the amount stipulated to by the parties, \$282.06 per week, is payable beginning on 12/28/04, and continuing to the date of hearing, 1/08/07, and thereafter for so long as the claimant is entitled under the provisions of Section 287.240 RSMo.

The claimant was only two years old as of the date of hearing in this matter. Section 287.240 (5) provides discretion to order the compensation to any child to be paid to the parent, grandparent, or other next of kin or conservator for the child’s support, maintenance and education. The death benefit provided herein is ordered to be paid to Amanda Lewis, the mother of the claimant, for the purposes set forth in Section 287.240 (5), such order subject to modification as provided for by law.

It is further acknowledged, by stipulation of the parties, that the statutory burial benefit has been previously paid by the employer and insurer to the relevant provider of services, Nieburg-Vitt Funeral Home Inc.

This award is subject to a lien in favor of Donald L. Kohl, Attorney at Law, in the amount of 25% thereof for necessary legal services rendered.

This award is subject to interest as provided by law.

Date: March 16, 2007

Made by: /s/ Kevin Dinwiddie
Kevin Dinwiddie
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST
PATRICIA "PAT" SECREST
Director
Division of Workers' Compensation