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

Injury No.: 98-105462

Employee: David Spradling, Deceased

Dependents: Lee Spradling, Brittinee Spradling and Marinda Spradling

Employer: Russell Stover Candies, Inc. (Settled)
d/b/a Smiley Container Corporation

Insurer: Hartford Casualty Insurance Company (Settled)

Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.[1] Having reviewed the evidence, read the briefs, heard oral argument, and considered the whole record, the Commission finds that the award of the administrative law judge (ALJ) is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the ALJ dated June 22, 2011, as supplemented herein.

The Second Injury Fund argues on appeal that the ALJ misapplied the definition of "dependent" provided in § 287.240 RSMo and consequently erred in awarding employee's permanent total disability benefits to his children. The Second Injury Fund reasons that because § 287.240 RSMo deals with injury-related deaths, "the definition of dependent and the conclusive presumption about minor children is inapplicable" to a determination of who is a dependent under § 287.230 RSMo.

We find that a logical reading of the pertinent statutory sections reveals that the ALJ properly applied the definition of "dependent."

Section 287.240 RSMo provides, in relevant part:

> (4) 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. (emphasis added). 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:
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> …
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> (b) A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of eighteen years, … 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. (emphasis added).

Section 287.230.1 RSMo provides, as follows:

> The death of the injured employee shall not affect the liability of the employer to furnish compensation as in this chapter provided, so far as the liability has

[1] Statutory references are to the Revised Statutes of Missouri 1998 unless otherwise indicated.

> accrued and become payable at the time of the death, and **any accrued and unpaid compensation due the employee shall be paid to his dependents without administration**, or if there are no dependents, to his personal representative or other persons entitled thereto, but the death shall be deemed to be the termination of the disability. (emphasis added).

Section 287.240(4) RSMo makes it clear that the detailed definitions are provided to determine an employee's "dependents" whenever necessary within Chapter 287 of the Revised Statutes of Missouri. In fact, the Missouri Supreme Court confirmed that § 287.240.4(b) applies to the entire workers' compensation chapter in *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W.3d 900, 902 (Mo. App. 2007).

In this case, there is no dispute that on the date of employee's work accident and injury, September 3, 1998, employee was single and unmarried with three children under the age of 18: Lee Spradling (11 years old), Brittinee Spradling (6 years old), and Marinda Spradling (4 years old). We find, as the children's father, employee was legally liable for the support of said children. In accordance with § 287.240 RSMo, the children are employee's conclusively presumed total dependents and, therefore, we find that the ALJ's award is fully supported by the competent and substantial evidence.

The Commission affirms the award and decision of the ALJ, as supplemented herein.

The award and decision of Administrative Law Judge Carl Strange, issued June 22, 2011, is attached hereto and incorporated herein to the extent it is not inconsistent with this decision and award.

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

We advise the parties that Division of Workers' Compensation (Division) records reveal that on various dates the Director of the Division mailed to necessary parties Notice(s) of Lien(s) on Workers' Compensation Benefits in accordance with § 454.517.5 RSMo. Consequently, this award may be subject to a lien or liens in favor of the Director of the Family Support Division, Missouri Department of Social Services pursuant to the provisions of §§ 454.517 and 287.260 RSMo.

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

Given at Jefferson City, State of Missouri, this 9th day of February 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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James Avery, Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary