

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

CLAUDIO SANCHEZ MOLINA)
Deceased Employee)
V.)
3D WELL SERVICE, LLC) AP-00-0468-971
Respondent) CS-00-0464-794
AND)
BITCO GENERAL INSURANCE CORP.)
Insurance Carrier)

ORDER

Daria Hernandez de Sanchez, the surviving spouse of the deceased employee, Claudio Sanchez Molina, through her attorney Matthew Bretz, requested review of Administrative Law Judge Ali Marchant’s (ALJ) Award dated July 12, 2022. Denise Tomasic appeared as counsel for the respondent and its insurance carrier (respondent). The case has been placed on the summary docket for disposition without oral argument.

RECORD AND STIPULATIONS

The Board considered the record and the parties’ arguments.

ISSUES

1. Does the Division of Workers Compensation have jurisdiction over the deceased claimant’s dependent son?
2. Does the Board have jurisdiction to address the constitutionality of: (A) the statutory cap on death benefits, as well as payments over time, and (B) the denial of the right to a jury trial?

FINDINGS OF FACT

The claimant, a 52-year old oil field laborer, sustained a fatal work accident on March 31, 2022, as a result of injuries sustained in a motor vehicle accident. The claimant left a surviving spouse and wholly dependent child as defined by K.S.A. 44-508(c)(3)(D). The son, currently 20 years old, is enrolled as a full-time student at Kansas State University.

The Application for Benefits identifies Daria Hernandez de Sanchez as the surviving spouse and a client of Mr. Bretz. The Application for Benefits does not list the claimant's dependent son, Jesus Eduardo Sanchez (the son), as a client of Mr. Bretz. A written fee agreement was not filed based on the record contained in OSCAR (Online System for Claims Administration Research/Regulation).

On July 12, 2022, the ALJ approved an Award for a compensable death claim. The son was identified as a wholly dependent child of the deceased employee and enrolled on a full-time basis in college. The Award listed Mr. Bretz as representing both the surviving spouse and the son. The surviving spouse, the son and the respondent reserved their right to address the constitutionality of the death benefit cap and the denial of a jury trial on appeal. Mr. Bretz's fee agreement was approved. On July 19, 2022, the claimant filed a timely application for review by the Workers Compensation Appeals Board.

PRINCIPLES OF LAW, ANALYSIS AND CONCLUSIONS

Claimants argue the Act denies injured workers, and the heirs of workers, the fundamental right to a trial by jury, and to have a jury determine the amount of damages. Claimants contend the statutory cap on damages and allowing an employer and its insurer to pay damages over time is also unconstitutional.

The respondent argues the Board lacks jurisdiction to decide whether the Act is constitutional and the case is not ripe for a decision. Alternatively, the respondent maintains the Act is constitutional.

A more fundamental issue, raised *sua sponte* by the Board, is present. Namely, the Board is concerned whether jurisdiction exists over the son. The Application for Benefits does not list the son as a party or a client of Mr. Bretz. The record lacks an attorney-client contract showing the son is a client of Mr. Bretz. The Award, presumably drafted and approved by counsel, lists the son as Mr. Bretz's client, but nothing else supports such assertion. Additionally, absent an attorney-client contract being filed, there is no basis to determine the reasonableness of whatever fee has been charged.

The Board vacates the Award and remands to the ALJ. The parties have already stipulated to the dependency of the son. The parties must confirm whether the son is represented by counsel through an attorney-client contract and an amended Application for Benefits listing the son as a dependent. The attorney fee agreement, along with what is being charged as fees and expenses, must be made part of the record.

The constitutional issues are moot until the identity of the represented parties is discerned. If a new Award is forthcoming following this remand, the Board will be able to expedite the appeal of the future Award, such that an appeal may be made to the Kansas Appellate Courts on the remaining issues.

AWARD

WHEREFORE, the Board vacates and remands the Award dated July 12, 2022, for additional proceedings consistent with this Award.

IT IS SO ORDERED.

Dated this _____ day of September, 2022.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

Electronic copies via OSCAR to:
Matthew Bretz
Denise Tomasic
Honorable Ali Marchant