

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>KENDRICK GREGORY (DECEASED)</b>	)	
Claimant	)	
V.	)	AP-00-0456-634
	)	CS-00-0450-581
<b>TYSON FRESH MEATS, INC.</b>	)	
Self-Insured Respondent	)	

**ORDER**

Claimants request review of the February 15, 2021, Award by Administrative Law Judge (ALJ) Pamela J. Fuller. Matthew L. Bretz appeared for Claimants. Frank Matande and Gregory D. Worth appeared for self-insured Respondent. Oral argument was scheduled for July 15, 2021. The parties, by email on July 14, 2021, agreed the Board may hear the matter based solely on the briefs. The case was placed on the summary docket for disposition without oral argument.

**RECORD AND STIPULATIONS**

The Board considered the record and adopted the stipulations listed in the Award.

**ISSUES**

Does the Board have jurisdiction to address the constitutionality of: (1) the statutory cap on death benefits and (2) the denial of the right to a jury trial?

**FINDINGS OF FACT**

Claimant met with personal injury by accident arising out of and in the course of his employment, which resulted in his death on March 23, 2020.

Ashley Babette Gregory married Claimant on April 7, 2010. On October 22, 2010, they had a child named Taleya Desire'e Gregory. In 2014 or 2015, Claimant and Ms. Gregory jointly abandoned the marriage and have not lived as husband and wife since. Ms. Gregory testified she is voluntarily waiving any claim to benefits on her own behalf as a spouse.

Claimant had a child, Malik Elliot Gregory, with Erika Tamayo on June 9, 2016. Ms. Tamayo was living with Claimant at the time of his death and considered them to be

married under common law. Ms. Tamayo testified she was unaware Claimant was still legally married to Ms. Gregory at the time of his death. Ms. Tamayo indicated she sought survivor benefits for her son, and waived any claim to benefits on her own behalf.

The ALJ determined the two minor children, Taleya Gregory and Malik Gregory, were the natural heirs of Claimant and entitled to survivor benefits. Further, the ALJ found Ashley Gregory, the abandoned, but lawful wife of Claimant, lawfully waived her rights to benefits. The ALJ also noted she did not have jurisdiction to rule on the constitutionality of the Kansas Workers Compensation Act (Act).

Both children were awarded survivor benefits by the ALJ, paid to First National Bank of Hutchinson as the conservator of both children. These benefits were provided in a lump sum of \$20,000.00, plus 47 weeks of compensation at the rate of \$326.05 per week, for a total of \$35,324.35 to each child, with payments continuing until each child reaches the age of 18 or 23 if a full-time student, or until further order of the Director. Medical and funeral costs were approved and paid.

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

Respondent argues the Board lacks jurisdiction to decide whether the Act is constitutional. Alternatively, Respondent maintains the Act does not violate due process in denying a jury trial and establishing a cap on damages because the Act was lawfully enacted by the Legislature in the public interest and provides an adequate substantial remedy.

### **PRINCIPLES OF LAW AND ANALYSIS**

The Board adopts and affirms the ALJ's Award in total. Claimants' two constitutional arguments are considered, but the Board may not decide the constitutionality of Kansas laws.<sup>1</sup> The issues are reserved for a court of competent jurisdiction. Pursuant to K.S.A. 44-551, the Board heard the case, and it may proceed to the appellate courts.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board the Award of Administrative Law Judge Pamela J. Fuller, dated February 15, 2021, is affirmed.

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<sup>1</sup> See *Pardo v. United Parcel Service*, 56 Kan. App. 2d 1, 422 P.3d 1185 (2018).

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July, 2021.

\_\_\_\_\_  
BOARD MEMBER

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BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: (Via OSCAR)

Matthew L. Bretz, Attorney for Claimants  
Frank Matande and Gregory D. Worth, Attorneys for Self-Insured Respondent  
Hon. Pamela J. Fuller, Administrative Law Judge