

BRET R. OWENS, deceased Employee, by KAREN OWENS, Petitioner/Appellant, v. WATER GREMLIN CO. and WESTERN NAT'L MUT. INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS  
AUGUST 6, 1999

No. [REDACTED SSN]

HEADNOTES

PERMANENT PARTIAL DISABILITY - DEPENDENTS OR HEIRS; STATUTES CONSTRUED - MINN. STAT. § 176.101 (1994), MINN. STAT. § 176.101 (1995) and MINN. STAT. § 176.021, subd. 3 (1995). Although a reasonable argument could be made that the 1995 statutory changes were intended to reduce rather than to expand benefits owed to injured employees, such an argument did not supplant the clear language of the statute, which provides authority for the distribution of vested and unpaid permanent partial disability benefits to the employee's estate and ultimately to his dependents, and the compensation judge erred in denying such a distribution.

Reversed.

Determined by Pederson, J., Wheeler, J., and Johnson, J.  
Compensation Judge: Peggy A. Brenden

OPINION

WILLIAM R. PEDERSON, Judge

The petitioner appeals from the compensation judge's denial of payment of the deceased employee's permanent partial disability benefits to the employee's surviving wife. We reverse.

BACKGROUND

On February 26, 1995, Bret R. Owens sustained a massive crush injury to his chest when he was pinned against a wall by a robot arm while working for Water Gremlin Company. This injury in turn led to an anoxic ischemic brain injury rated as a 99.93% impairment of the whole body. On the date of injury, Water Gremlin Company [the employer] was insured for workers' compensation liability by Western National Mutual Insurance Company [the insurer]. The employer and insurer admitted liability for Mr. Owens' injuries and paid concurrent permanent total disability and impairment compensation benefits<sup>1</sup> from the date of injury through

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<sup>1</sup> Minn. Stat. § 176.101, subd. 3o(a) (1984), provided in part as follows:

May 28, 1996, when Mr. Owens [the employee] died from the effects of his work injuries. He was thirty-four years old at the time of death and was survived by his wife, Karen Owens [the petitioner], and two dependent sons. The employer and insurer commenced payment of dependency benefits, and the parties subsequently entered into a partial stipulation for settlement that resolved the employee's dependents' claim for benefits, with the exception of claims for permanent partial disability benefits. An Award on Partial Stipulation was filed on October 21, 1998.

On February 2, 1998, the petitioner filed a Claim Petition seeking payment of permanent partial disability benefits less amounts previously paid to the employee. In their Answer on February 20, 1998, the employer and insurer denied liability for any additional permanency, affirmatively alleging "that the dependents are not entitled to permanent partial disability, as the right to such benefits ceased with the employee's death."

The dispute was submitted to Compensation Judge Peggy A. Brenden on stipulated facts and trial memoranda on December 17, 1998. The sole issue before the compensation judge was whether the deceased employee's dependents became entitled to payment of the balance of the employee's impairment compensation after his death on May 28, 1996.<sup>2</sup> In her Findings and Order issued on January 14, 1999, the compensation judge determined that the employer and insurer were only liable for impairment compensation benefits through May 28, 1996, and that the employee's dependents were not entitled to permanency that would have been payable to Mr. Owens had he lived beyond that date. The petitioner appeals.

#### STANDARD OF REVIEW

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

#### DECISION

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An employee who is permanently totally disabled pursuant to subdivision 5 shall receive impairment compensation as determined pursuant to subdivision 3b. This compensation is payable in addition to permanent total compensation pursuant to subdivision 4 and is payable concurrently. In this case the impairment compensation shall be paid in the same intervals and amount as the permanent total compensation was initially paid, and the impairment compensation shall cease when the amount due under subdivision 3b is reached.

<sup>2</sup> The balance of the employee's impairment compensation claimed by the dependents was \$366,141.00, payable in installments pursuant to Minn. Stat. § 176.101, subd. 2a (1995).

The case before us presents the issue of whether an employee's claim for permanent partial disability benefits may survive his death. It is well settled that the workers' compensation statutes in effect on the date of an employee's disabling injury govern both the employee's right to compensation and the extent of the employer's liability. Broos v. Portec, Inc., 376 N.W.2d 688, 38 W.C.D. 224 (Minn. 1985). It is also well settled that entitlements and liabilities arising consequent to an employee's death are governed by the laws in effect on the date of the death. Minogue v. City of St. Paul, 320 N.W.2d 90, 34 W.C.D. 698 (Minn. 1982); Borchardt v. Biddick, 306 N.W.2d 817, 33 W.C.D. 664 (Minn. 1981); Lakics v. Lane Bryant Dep't Store, 263 N.W.2d 608, 30 W.C.D. 264 (Minn. 1978); Schwartz v. Talmo, 205 N.W.2d 318, 26 W.C.D. 627 (Minn. 1973). The employee in this case was injured on February 26, 1995, but died from causes related to the injury on May 28, 1996. Between those two dates, effective October 1, 1995, the law changed. The necessity here to resolve certain arguable inconsistencies in the elements of that change renders this case apparently one of first impression.

The compensation judge, in her memorandum, offered two reasons for her conclusion that the employee's dependents are not entitled to permanent partial disability benefits that would have been payable to the employee had he lived beyond May 28, 1996. First, she noted that the law in effect on the date of the employee's death makes no explicit provision for the payment of permanent partial disability benefits to dependents after an employee dies. Citing case law,<sup>3</sup> the judge emphasized that an employee's right to benefits rests solely upon, and is limited by, the statutes creating that right. In the absence of specific statutory authority for distribution of benefits to dependents or heirs, she held, no right to distribution exists. As a second basis for her conclusion, the judge adopted the employer and insurer's argument regarding legislative intent. She concluded that it was highly unlikely, given the general nature of the statutory changes that became effective October 1, 1995, that the legislature "intended to greatly expand dependents' entitlement to permanent partial disability benefits without any express or implied indication in the statute of that intent."

We agree with the compensation judge that the rights and benefits granted under the workers' compensation act are purely statutory and do not extend beyond the life of the injured employee unless the statute so provides. When the legislature has intended to pass benefits on to an injured employee's dependents or heirs, they have usually done so in no uncertain language. Moreover, the parties are in agreement that the employee's death is the event that controls the rights of his dependents. Complicating the issue in this case, however, is the extent to which the benefits here at issue are rights not only of the employee's dependents but also of the employee himself. In reaching our decision in this case, as to whether statutory authority for the distribution of permanent partial disability benefits existed on the date of the employee's death, May 28, 1996, we have made a thorough review of the case law and statutory history leading up to the relevant changes that became effective on October 1, 1995.

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<sup>3</sup> The judge cites Umbreit v. Quality Tool Co., 302 Minn. 376, 225 N.W.2d 10, 27 W.C.D. 688 (1975); Tierney v. Tierney & Co., 176 Minn. 464, 223 N.W.2d 773, 5 W.C.D. 185 (1929); and Lakics, 263 N.W.2d 608, 30 W.C.D. 264.

## Statutory History

The repeated pronouncement of earlier cases considering the survivability of workers' compensation benefits is that, in the absence of any statutory provision authorizing distribution of benefits to dependents or heirs, all claims for benefits terminate when the employee dies.<sup>4</sup> See Tierney v. Tierney & Co., 176 Minn. 464, 223 N.W.2d 773, 5 W.C.D. 185 (1929); Umbreit v. Quality Tool Co., 302 Minn. 376, 225 N.W.2d 10, 27 W.C.D. 688 (1975); Rozales v. Peerless Welder, Inc., 311 Minn. 6, 246 N.W.2d 851, 29 W.C.D. 176 (1976); Mattson v. Prospect Foundry, 255 N.W. 381, 29 W.C.D. 591 (Minn. 1977); Lakics, 263 N.W.2d 608, 30 W.C.D. 264. In reaching their conclusions, courts in those earlier cases, while not expressly basing their denials of benefits on such considerations, implied attention to whether or not the employee's death in a case was causally related to his work injury, whether or not the benefits at issue in the case were vested in the employee prior to his death, and whether or not those benefits were already accrued at the time of the death. Heirs in the case of Knoble v. Storer Realty Co., 255 N.W.2d 388, 29 W.C.D. 577 (Minn. 1977), were allowed to recover accrued benefits, but only under the following rationale:

[A]n unpaid award of benefits and expenses attributable to a work-related injury made to an employee during his lifetime is not extinguished by the death of the employee from causes not related to the injury to the extent that it is fixed in amount and relates to periods which terminated either before or upon the death of the employee and would have been paid to him during his lifetime had no appeal been taken by the employer.

Knoble, 255 N.W.2d at 392-93, 29 W.C.D. at 584.

Perhaps in response to the Umbreit and Rozales decisions, Minn. Stat. § 176.021,

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<sup>4</sup> Minn. Stat. § 176.101, subd. 6 (repealed June 4, 1975), authorized distribution of benefits to dependents or heirs in limited circumstances. This statute provided:

In case a worker sustains an injury arising out of and in the course of employment, and during the period of disability caused thereby death results approximately therefrom, all payments for temporary or permanent disability previously made as compensation for such injury are deducted up to a maximum of \$17,500 from any compensation due on account of the death, and accrued compensation due to the deceased prior to his death but not paid is payable to such dependent persons or legal heirs as the commissioner of the department of labor and industry, compensation judge, or commission in cases upon appeal may order, without probate administration.

subd. 3, was amended in 1977 to confer on dependents or heirs of a deceased covered employee the right to receive that employee's permanency benefits where that permanency has been ascertained but the employee did not receive payment for it before death from a nonwork-related cause. The amended portion of the statute reads as follows:

In the event that an employee's death is not compensable under this chapter, the right to receive a permanent partial disability payment shall vest in the injured employee or his dependents under this chapter or, if none, in his legal heirs at the time the disability can be ascertained and the right shall not be abrogated by the employee's death prior to the making of the payment.<sup>5</sup>

In Borchardt, the court had occasion to construe the provisions of the 1977 amendment. Mr. Borchardt suffered a work-related heart attack on October 14, 1976, and died from nonwork-related causes on November 11, 1978. His heirs sought to recover payment for ascertained permanent partial disability not paid to the employee during his lifetime. The employer and insurer contended that the employee's work injury was the "compensable event" in the case and that the law in effect on the date of that injury, October 14, 1976, applied to any claims relating to permanent partial disability stemming from that injury. The court held that the rights of dependents or heirs are separate and inchoate rights that become effective on the death of an employee and are thus governed by the laws that are in effect on the date of that death. As such, the provision added in 1977 to section 176.021, subd. 3, was determined to be applicable in support of the rights of Mr. Borchardt's heirs at the time of his death in November 1978. Subsequent to the court's decision in Borchardt, benefits were denied to an employee's dependents based on that same statute, in a case where the employee died from causes that were related to his work injury. See Minogue, 320 N.W.2d 90, 34 W.C.D. 698.

Minn. Stat. § 176.021, subd. 3, was again amended in 1979. Effective October 1, 1979, the pertinent portion read as follows:

The right to receive temporary total, temporary partial, permanent partial or permanent total disability payments shall vest in the injured employee or his dependents under this chapter or, if none, in his legal heirs at the time the disability can be ascertained and the right shall not be abrogated by the employee's death prior to the making of the payment.

Minn. Stat. § 176.021, subd. 3 (1979) (changes underlined).<sup>6</sup> Subsequent to that change, the

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<sup>5</sup> This provision was added by Act of May 27, 1977, ch. 342, § 4, 1977 Minn. Laws 697, 699-700 (effective May 28, 1977).

<sup>6</sup> See Act of June 7, 1979, ch. 3, § 30, 1979 Minn. Laws Ex. Sess. 1256, 1271-72.

statute provided that all claims for indemnity benefits, wage replacement as well as permanent partial disability, survived the death of the employee, regardless of whether that death was work-related or nonwork-related. Benefits were recoverable by the employee's dependents or, if none, his heirs so long as the disability was "capable of ascertainment" prior to the death of the employee. Erickson v. Gopher Masonry, Inc., 329 N.W.2d 40, 35 W.C.D. 523 (Minn. 1983); see also Christenson v. Aslesen's Wholesale Food, 345 N.W.2d 769, 36 W.C.D. 576 (Minn. 1984).

An entirely new payment scheme was created by the broad statutory changes enacted in 1983.<sup>7</sup> For injuries after January 1, 1984, it became necessary to read section 176.021, subd. 3, in tandem with section 176.101. Benefits referred to in section 176.021, subd. 3, were to be paid "pursuant to" or "subject to" section 176.101. Wage replacement benefits continued to survive the death of the employee regardless of the cause of death, but a new method was established for dealing with permanent partial disability benefits. Minn. Stat. § 176.021, subd. 3, now read:

The right to receive temporary total, temporary partial, or permanent total disability payments vests in the injured employee or the employee's dependents under this chapter or, if none, in the employee's legal heirs at the time the disability can be ascertained and the right is not abrogated by the employee's death prior to the making of the payment.

The right to receive economic recovery compensation or impairment compensation vests in an injured employee at the time the disability can be ascertained provided that the employee lives for at least 30 days beyond the date of the injury. Upon the death of an employee who is receiving economic recovery compensation or impairment compensation, further compensation is payable pursuant to section 176.101. Impairment compensation is payable under this paragraph if vesting has occurred, the employee dies prior to reaching maximum medical improvement, and the requirements and conditions under section 176.101, subdivision 3e, are not met.

At the time of the employee's work injury in February 1995, section 176.101 included the following provisions:

**Subd. 3r. Payment of compensation at death.** If an employee receiving economic recovery compensation or impairment compensation in periodic amounts dies during the period from causes unrelated to the injury, the compensation shall be paid in the

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<sup>7</sup> See Act of June 7, 1983, ch. 290, § 33 and § 61, 1983 Minn. Laws 1310, 1329-30, 1346-47.

following manner:

(a) If the deceased employee leaves a dependent surviving spouse and no dependent children, as defined by section 176.111, subdivision 1, the spouse shall receive the periodic economic recovery or impairment compensation that the deceased was receiving before the death. This compensation shall be paid for a period of up to ten years after the date of death at which time payments and future entitlement to it ceases.

(b) If the deceased employee leaves a dependent spouse and dependent children, as defined in section 176.111, subdivision 1, the periodic economic recovery or impairment compensation shall continue to be paid to the surviving spouse for up to ten years after the last child is no longer dependent after which time payments and future entitlement to the compensation ceases.

(c) If the deceased employee leaves a dependent child, as defined by section 176.111, and no dependent spouse, the periodic economic recovery or impairment compensation shall continue to be paid to the child until the child is no longer dependent or until the amount to which the employee was entitled to receive is exhausted, whichever is later.

(d) Payment of compensation under this subdivision shall cease prior to the end of the ten-year periods in this subdivision if the amount to which the employee is entitled to receive under subdivision 3a or 3b is reached prior to the end of the ten-year period except as provided in clause (c). If the deceased employee is not survived by dependent children or a dependent spouse as defined in section 176.111, no further economic recovery compensation or impairment compensation is payable to any person.

(e) If the death results from the injury, the payment of economic recovery compensation or impairment compensation shall cease upon the death and in lieu thereof death benefits are payable pursuant to section 176.111.

It is noteworthy first of all that, effective 1984, the legislature removed “permanent partial” disability benefits from that first portion of section 176.021, subd. 3, that had pertained to the normal survival of claims to dependents. Pursuant to the immediately subsequent paragraph, the right to receive “economic recovery compensation [ERC] or impairment compensation [IC]” (simply “permanent partial disability” compensation in the previous statute) now vested only “in an injured employee,” rather than “in the injured employee or his dependents under this chapter or, if none, in his legal heirs.” The 1984 statute continued to require that the disability be ascertainable for vesting of ERC or IC to occur, but now it was also required that the employee live for at least thirty days beyond the date of his injury for that to happen. Finally, the new statute did provide that “further compensation is payable” upon the death of an employee who was receiving ERC or IC, but only “pursuant to section 176.101.”

A review of section 176.101, subd. 3r, as enacted effective 1984, provides some explanation for the 1984 changes in the statutory language of section 176.021, subd. 3. First, the ERC or IC referred to in the latter was now, in 1984, only payable to a deceased employee's dependents, not to his heirs. See Eaves v. Control Data Corp., 43 W.C.D. 195 (W.C.C.A. 1990). Secondly, the ERC or IC was only payable to those dependents if the employee's death was from causes unrelated to the injury. If the employee died from causes related to the work injury, the payment of ERC or IC ceased, and in lieu thereof death benefits were payable pursuant to Minn. Stat. § 176.111. In essence, the 1984 version of section 176.021, subd. 3, vested the injured employee, alone, at the time his disability was ascertained, with the right to receive ERC or IC (provided he lived for at least 30 days beyond the date of his injury); the qualifying language as to the manner in which those benefits were paid, and to whom, was controlled by section 176.101, subd. 3r.

The parties agree that, if the statutory provisions in effect on the date of the employee's injury, February 26, 1995, including the complex of provisions reviewed above, are applicable to this claim, no further permanent partial disability benefits would be payable, since, under those provisions, the employee's dependents would have entitlement to dependency benefits only. That complex of law is no longer applicable here, however, since the entire two-tiered permanency system, including the provisions set forth in section 176.101, subd. 3r, pertaining to the manner and payee of payment of an employee's vested permanency, was repealed effective October 1, 1995,<sup>8</sup> prior to the employee's death and therefore prior to the advent of any cause of action by the employee's dependents or heirs. With the repeal of section 176.101, subd. 3r, the statute, pursuant to the remaining but amended section 176.021, subd. 3, no longer distinguishes between deaths from causes related or unrelated to the injury or concerns itself with whether "vested" permanency benefits of a deceased employee are payable either to the employee's dependents or to the employee's legal heirs.

The current pertinent provisions of section 176.021, subd. 3, read as follows:

Permanent partial compensation is payable for functional loss of use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in addition to payment for any other compensation, subject to section 176.101. The right to receive temporary total, temporary partial, or permanent total disability payments vests in the injured employee or the employee's dependents under this chapter or, if none, in the employee's legal heirs at the time the disability can be ascertained and the right is not abrogated by the employee's death prior to the making of the payment.

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<sup>8</sup> See Act of May 25, 1995, ch. 231, Art. 1, §§ 14, 19, 1995 Minn. Laws 1984-85, 1989-90.

The right to receive permanent partial compensation vests in an injured employee at the time the disability can be ascertained provided that the employee lives for at least 30 days beyond the date of the injury. Upon the death of an employee who is receiving economic recovery compensation or impairment compensation, further compensation is payable pursuant to section 176.101. Impairment compensation is payable under this paragraph if vesting has occurred, the employee dies prior to reaching maximum medical improvement, and the requirements and conditions under section 176.101, subdivision 3e, are not met.

Minn. Stat. § 176.021, subd. 3 (1995) (new language underlined). All references to permanent partial disability in the new section 176.101 are contained in subdivision 2a, which provides at (b) as follows:

(b) Permanent partial disability is payable upon cessation of temporary total disability under subdivision 1. The compensation is payable in installments at the same intervals and in the same amount as the employee's temporary total disability rate on the date of injury. Permanent partial disability is not payable while temporary total compensation is being paid.

### Petitioner's Position

Contrary to the position of the respondent employer and insurer, the petitioner's position is essentially founded on the express provisions of the statute with regard to the employee's entitlements. Minn. Stat. § 176.021, subd. 3, provides that “[u]pon the death of an employee who is receiving [permanent partial compensation], further compensation is payable pursuant to section 176.101” (emphasis added). The petitioner contends that, with the repeal of section 176.101, subd. 3r, there is nothing in the statute that prohibits or limits the payment of permanent partial disability benefits to the employee's dependents. All references in the current statute to the payment of permanent partial disability benefits upon the death of an employee are contained in section 176.021, subd. 3 (1995), she argues, and since October 1, 1995, the legislature has not reinstated any benefit-limiting language relative to permanent partial disability. She contends that the fundamental principles of statutory construction support her interpretation of the current law. We essentially agree.

Minn. Stat. § 645.16 provides that “[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions,” and “[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.” Moreover, pursuant to Minn. Stat. § 645.08 (1), words and phrases are to be construed according to their plain meaning, and we

must be guided by the presumption that the legislature does not intend an absurd or unreasonable result. Minn. Stat. § 645.17(1). As the petitioner suggests, the plain meaning of the phrase “is payable” in section 176.021, subd. 3, is difficult to construe in more than one way, and that section’s repeated reference to section 176.101 is also logical and reasonable, given that subdivision 2a of that section directs the manner and frequency in which the benefits at issue are to be paid.<sup>9</sup>

As the petitioner has also argued, Minn. Stat. § 176.021, subd. 3 (1995), apparently imposes only two requirements for further payment of permanent partial disability benefits: first, that the right to receive permanent partial compensation be vested in the injured employee; second, that the employee be receiving permanent partial disability benefits at the time of his death. We agree that Mr. Owens’ right to receive permanent partial compensation vested once it was determined that he had sustained significant impairment and once he had lived for thirty days beyond the date of injury. Impairment compensation benefits were being paid up to the date of death, and, according to the plain meaning of the statutory language, further permanent partial compensation therefore “is payable.” Since the employee is no longer alive to receive that payment, it should logically be made, absent statutory language to the contrary, to his estate and his dependents. As the petitioner has also noted, section 176.021, subd. 3, also provides that “[p]ermanent partial compensation is payable for functional loss of use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in addition to payment for any other compensation, subject to section 176.101. This language most reasonably implies that, if section 176.101 does not bar its receipt, permanent partial disability benefits shall be payable in addition to any other compensation, including dependency benefits, unless precluded by statute.

#### Respondent Employer and Insurer’s Position

Whereas the appellant petitioner has essentially based her position on express provisions vesting an employee’s permanency benefits in the employee, the respondent employer and insurer have based their position essentially on the absence of statutory provisions for distribution of a deceased employee’s permanency benefits to his dependents. Arguing from the Lakics case, 263 N.W.2d 608, 30 W.C.D. 264, the employer and insurer contend that there is simply no statutory provision empowering the courts to distribute compensation for permanent partial disability upon the death of an employee. Prior to the October 1, 1995, changes to Chapter 176, they argue, the provisions of Minn. Stat. § 176.021, subd. 3, and Minn. Stat. § 176.101, subd. 3r, were read in tandem because, by its plain language, the statutory sections referred to each other and did so in a manner that allowed logical interpretation. Once the legislature repealed subdivision 3r, they contend, there simply is no statutory authority entitling the employee’s dependents or heirs to payment of further permanency benefits. The legislature

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<sup>9</sup> Subdivision 2a(b) of the statute provides that “[t]he compensation is payable in installments at the same intervals and in the same amount as the employee’s temporary total disability rate on the date of injury.”

chose not to enact any statutory provision which specifically authorizes distribution of unpaid permanency benefits and, as such, they argue, those benefits may not be distributed by an order of this court. We conclude that the express language of the statute discussed above, identifying fully vested benefits as “payable,” prevails in the context of this argument and entitles the employee’s estate to payment.

The employer and insurer have also contended that, as a result of the 1995 statutory changes, the only section authorizing distribution of permanent partial disability benefits is section 176.101, subd. 2a. They argue that this section only addresses how permanent partial disability benefits are to be computed and how they interact with temporary total disability benefits. Although the section references payment of permanency to employees, no amendment, they argue, was made that would revive or reinstitute any right in dependents or heirs to claim inheritance of that permanency. They argue that the only logical construction to be given the current law is to assume that the legislature left the language in section 176.021, subd. 3, to allow distribution of permanency either where the permanency was accrued and unpaid before the employee’s death or where the dependents are entitled to permanency by virtue of the statute in effect at the time of the employee’s injury. Neither scenario, they argue, is applicable to this case. We conclude again, however, that the noted absences in the amended section 176.101 do not control or limit the express entitlements remaining in section 176.021.

The employer and insurer have argued further that section 176.021, subd. 3, and section 176.101, as currently drafted, could be viewed as irreconcilable, in that the former creates an entitlement to benefits in the employee and instructs payment to be made according to the mechanism set forth in the latter. They suggest that the mere fact that the statute is silent as to the payee implied in section 176.021's mandate of “payment” should not be construed as a legislative intent to recreate, through silence, a right that dependents and heirs have not had since the law changed in 1983. They argue that the most generous and logical conclusion one may draw in this circumstance is simply that Minn. Stat. § 176.021 did not extinguish the rights of dependents or heirs to claim accrued but unpaid permanency. We conclude, however, that “payment” to someone is mandated by the statute, and that the only reasonable payee in this circumstance is the employee’s estate and heirs.

The employer and insurer argue further that policy considerations underlying the October 1, 1995 statutory changes support their position, that “[t]he intent of the Legislature in enacting the October 1, 1995 changes was to reduce, not expand, the benefits owed to injured employees.” As examples, they cite the durational limits that were imposed on temporary total disability benefits pursuant to Minn. Stat. § 176.101, subd. 1, as well as the requirement that certain levels of permanent disability be achieved in order for an injured employee to qualify for permanent total disability benefits pursuant to Minn. Stat. § 176.101, subd. 5. To expand dependents’ rights to benefits absent a clear statutory expression of intent, they argue, is not in keeping with the clear legislative intent of the 1995 Act. While this argument has merit, we remain unpersuaded, as we will more fully explain below in our conclusion.

Finally, the employer and insurer contend that their liability for payment of

permanent partial disability benefits to Mr. Owens, including the circumstances under which that liability would exist, was established as of February 26, 1995, the date of the employee's death. In other words, if the employee had survived the effects of his injury, he would have been paid those permanent partial disability benefits to which he was entitled, or if he had died from causes unrelated to the injury, that permanency would be paid now to his dependents pursuant to Minn. Stat. § 176.101, subd. 3r. The employee's death was related to his work injury, however, and therefore, they argue, pursuant to the statute applicable at the time of the employee's injury, permanency may not be paid to the employee's dependents. Id. Payment to the dependents in this case, they contend, would be an unconstitutional expansion of the liabilities of the employer and insurer which were statutorily fixed as of the date of injury. We decline to accept this argument, as it was previously advanced and rejected by the supreme court in Borchert.

### Conclusion

The question presented here is whether the vested right of an injured employee to receive a specified amount of money weekly for a specified period of time as compensation for a permanent injury terminates if the employee dies from causes related to the injury before expiration of the specified period or time, or whether that right survives for the benefit of the employee's dependents or heirs. This court has carefully evaluated the briefs and arguments of counsel and concludes that the plain meaning of the statute provides for the recovery of vested and unpaid permanent partial disability benefits by the estate of Bret Owens. We find statutory authority for the posthumous distribution of such benefits in Minn. Stat. § 176.021, subd. 3 (1995).<sup>10</sup> At the time of his death, Mr. Owens had a vested right to receive permanent partial disability compensation for his injury of February 26, 1995. His disability had been ascertained and he had

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<sup>10</sup> The relevant portion provides as follows:

Permanent partial compensation is payable for functional loss of use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in addition to payment for any other compensation, subject to section 176.101.

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The right to receive permanent partial compensation vests in an injured employee at the time the disability can be ascertained provided that the employee lives for at least 30 days beyond the date of the injury. Upon the death of an employee who is receiving economic recovery compensation or impairment compensation, further compensation is payable pursuant to section 176.101.

(Emphasis added.)

lived for more than thirty days beyond the date of the injury. Once his right was vested, it was subject to defeasance only if defeasance was required by legislative direction.<sup>11</sup> The right to receive permanent partial disability compensation was a property right passing to the employee's estate, and it can be enforced by his heirs.<sup>12</sup> Nothing in the current statute divests the employee of his vested right to receive permanency benefits. Upon his death, the employee was receiving impairment compensation benefits. According to Minn. Stat. § 176.021, subd. 3 (1995), "Upon the death of an employee who is receiving . . . impairment compensation, further compensation is payable pursuant to section 176.101" (emphasis added). Section 176.101, subd. 2a, in turn provides that "[t]he compensation is payable in installments at the same intervals and in the same amount as the employee's temporary total disability rate on the date of injury" (emphasis added). Absent a reasonably clear indication elsewhere in the statute that the legislature intended to modify this right to say that a deceased injured worker's vested permanency is after all not payable, we cannot conclude that Mr. Owens' vested entitlement to permanency benefits terminated upon his death.

It is important to read Minn. Stat. § 176.021, subd. 3 (1995), in the context of its long legislative history. The term "vests" and its application to permanent partial disability benefits has been a part of subdivision 3 since 1977. We can presume that when the legislature enacted its sweeping changes to the workers' compensation act in 1983, including implementation of the two-tiered permanency system, it intended substantial changes in the law. Placing limitations on the employee's vested right to receive ascertainable permanent partial disability benefits, as the legislature did in enacting Minn. Stat. § 176.101, subd. 3r, was one of those substantial changes. Similarly, we may also presume that the legislature intends a substantial change in the law when it repeals a statute. Just as we must presume that the legislature intended to increase limitations on the survivability of permanency benefits when it added subdivision 3r in 1983, we should presume that the legislature intended to reduce those limitations when it deleted subdivision 3r from the statute in 1995. It certainly can be argued that subdivision 3 of section 176.021 was not thoroughly amended in 1995. However, although the amended statute's continued reference to ERC or IC benefits may be inapplicable to injury dates occurring after October 1, 1995, the amended statute as it exists still has applicability to the facts of the instant case and to other cases in which an employee may be "receiving" those forms of permanency on the date of his death, pursuant to earlier versions of the statute. On the effective date of the current statute, there were many injured employees who were receiving ERC and IC benefits, and the character of those benefits did not change with the statute. The arguable conflict between the repeal of the manner of payment provisions of section 176.101 and the failure to modify section 176.021, subd. 3, is not irreconcilable in this case.

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<sup>11</sup> For an example, see Minn. Stat. § 176.101, subd. 3r (1984).

<sup>12</sup> Blacks Law Dictionary 1401 (5th ed. 1979) defines "vested" as "[f]ixed; accrued; settled; absolute. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent."

Although a reasonable argument can be made that the 1995 statutory changes were intended to reduce rather than to expand benefits owed to injured employees, such an argument does not supplant the clear language of the statute. While the legislature did place a cap on entitlement to temporary total disability benefits and required permanent partial disability thresholds for entitlement to permanent total disability, it also raised the maximum compensation rate to \$615.00 per week and increased the minimum compensation rate for permanent total disability to 65% of the statewide average weekly wage. Given such evidence of compromising considerations at work in the total picture of the 1995 amendments, the ultimate “legislative intent” behind any single provision among those amendments remains difficult to discern.

We believe that our interpretation of the current statutes is consistent with the legislative history regarding the survivability of permanent partial disability benefits and is in keeping with fundamental principles of statutory construction. Statutory authority does exist for the distribution of vested and unpaid permanent partial disability benefits. Although the relationship between section 176.021, subd. 3, and section 176.101 is not as clearly defined as it was before the 1995 statutory changes, it continues to be subject to reasonable interpretation. For the reasons stated above, we reverse the Findings and Order of the compensation judge.