

ROLAND PANGERL, Deceased Employee, by JOANNE PANGERL, v. ELEC. REPAIR & CONSTR. and CNA COM. INS., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 25, 2001

No. [REDACTED SSN]

HEADNOTES

DEPENDENTS' BENEFITS; STATUTES CONSTRUED - Minn. Stat. §176.111, subd. 8. In order to effectuate the overall scheme of Minn. Stat. §176.111, the 25 percent reduction set forth in Minn. Stat. §176.111, subd. 8, is calculated before the application of the maximum compensation rate limitation in subdivision 20.

Affirmed.

Determined by Wilson, J., Pederson, J., and Wheeler, C.J.
Compensation Judge: Jennifer Patterson

MAJORITY OPINION

STEVEN D. WHEELER, Judge

The employer and insurer appeal from the compensation judge's method of calculation of the widow's benefit due to the employee's surviving spouse following the date the employee's children became ineligible for further dependent benefits. We affirm.

STANDARD OF REVIEW

Question of law. The issues on appeal in this matter involve the interpretation and application of case law to undisputed facts. While this court may not disturb a compensation judge's findings of fact unless clearly erroneous and unsupported by substantial evidence in the record as a whole, Minn Stat. § 176.421, subd. 1(3) (1992), a decision which rests upon the application of the law to undisputed facts involves a question of law which this court may consider *de novo*.

DECISION

This appeal presents a single issue of statutory construction on undisputed facts. The employee, Roland Pangerl, sustained an admitted personal injury on July 23, 1987 while working for the employer, Electric Repair and Construction. The employee's weekly wage on the date of injury was \$891.80. The employee died on August 12, 1987 as a result of the work injury, leaving a surviving spouse and two dependent children, Brandon, born in 1971, and Bryce, born in 1978.

Dependents' benefits were initiated by the employer and insurer following the employee's death pursuant to Minn. Stat. §176.111, subd. 8, which provides that

If the deceased employee leaves a surviving spouse and two dependent children, there shall be paid to the surviving spouse for the benefit of the spouse and children 66-2/3 percent of the daily wage at the time of the injury of the deceased until the last dependent child is no longer dependent. At that time the dependent surviving spouse shall be paid weekly benefits at a rate which is 25 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, adjusted according to section 176.645.

Two-thirds of the employee's weekly wage of \$891.80 yields a dependents' benefit amount of \$594.53. However, pursuant to Minn. Stat. §176.111, subp. 20, "[t]he total weekly compensation to be paid to full actual dependents of a deceased employee shall not exceed in the aggregate an amount equal to the maximum weekly compensation for a temporary total disability."

Accordingly, payments were initiated at the July 1987 maximum compensation rate of \$360.00, with subsequent yearly adjustments as required by Minn. Stat. §176.645.

As of January 22, 2001 Brandon was over 25 and Bryce was over 18 and was not attending school. The employer and insurer filed a petition to reduce the amount of their payments to the employee's spouse by 25 percent, on the basis that both children had ceased to be dependent pursuant to Minn. Stat. §176.111, subd. 1(b).¹ Under the employer and insurer's interpretation of Minn. Stat. §176.111, subd. 8, the payments being made to the employee's spouse, once having been reduced within the maximum compensation rate, must then be reduced by an additional 25 percent at the time of cessation of the dependency of the employee's children. Respondent spouse argued that her benefit entitlement, even after a 25 percent reduction, remained at a level greater than the maximum compensation rate, so that benefits should continue unreduced. The compensation judge held in favor of the respondent spouse.

The distinction rests solely on whether the 25 percent reduction set forth in Minn. Stat. §176.111, subd. 8, is calculated before or after the application of the limitation in subdivision 20. The employer and insurer argue that the statute is unambiguous and requires that the payments being made to the employee's spouse, already having been once reduced within the maximum compensation rate by operation of subdivision 20, must then be reduced by an additional 25 percent at the time of cessation of the dependency of the employee's children. Specifically, they point to the language in the subdivision which indicates that the level of benefits to be paid to the spouse on cessation of the children's dependency shall be "25 percent less than the last weekly workers' compensation benefit *payment*, as defined in subdivision 8a, while the surviving child was a

¹ That section provides a conclusive presumption of dependency for children under the age of 18, or under the age of 25 but attending as a full time student at a high school, college or university or in a course of vocational or technical training.

dependent” (emphasis added). As the last “payment” made already reflected the reduction to benefits resulting from application of the statutory maximum rate limitation, this language, taken by itself, would seem to support the employer and insurer’s position.

We note, however, that the phrase “last weekly workers’ compensation benefit payment” is specifically defined in subdivision 8a as “the workers’ compensation *benefit* which would have been payable without the application of subdivision 21.”² Here, the wording focuses on the dependents’ *benefit entitlement*, rather than the amount actually being paid. Using this definition, it cannot be said that the statutory language of subdivision 8 clearly requires one method of applying subdivision 20 over another. (Emphasis added.)

To resolve the question, we have considered the dependency benefits statute as a whole, to determine which method most closely carries out the overall statutory scheme embodied therein. Under subdivision 6, a surviving spouse with no dependent children at the time of the employee’s death receives a dependent’s benefit of 50 percent of the deceased employee’s wage for a period of ten years. Subdivision 7 deals with the situation where there is a surviving spouse and one dependent child. In this eventuality the surviving spouse receives 60 percent of the deceased employee’s wage, for the benefit of the spouse and the child, during the dependency of the child, after which she receives 16-2/3 percent less for a period of ten years. In situations where the maximum compensation rate is not exceeded, this results in a benefit for the surviving spouse alone which would be 50 percent of the deceased employee’s wage, returning the employee’s surviving spouse to the same position she would have been in if there had not been any surviving dependent children. Subdivision 8, which deals with the situation where two surviving dependent children are present, provides an initial benefit at 66-2/3 percent of the deceased employee’s wage during the dependency of any of the children, reverting again to the 50 percent level (which is 25 percent less than 66-2/3 percent) after neither child remains dependent.

Thus, the scheme of the statute is one in which all surviving spouses eventually receive 10 years of dependency benefits at the level of 50 percent of the employee’s wage at the time of injury; however, where surviving dependent children are present at the time of the employee’s death, this spousal benefit is deferred during the period of dependency of a child or children, during which time an increased benefit is paid to the spouse for herself and the dependent child or children. In other words, after the dependency of the children ends, the surviving spouse is returned to the same position of benefit entitlement she would have held had their been no surviving dependent children. In light of this statutory scheme, all surviving spouses clearly were intended to receive this spousal benefit at the same percentage rate explicitly provided in the statute, i.e., at the 50 percent level. Certainly the amount of this spousal benefit actually payable is subject to application of the maximum compensation rate, but this maximum limit is applied to the benefit amount determined after the percentage calculation is applied. This is consistent with all other benefit calculations involving application of the maximum compensation rate under the Workers’ Compensation Act.

² Subdivision 21, not directly part of the issues in this case, limits workers’ compensation dependency benefits to an amount which, combined with weekly government survivor benefits, does not exceed 100 percent of the employee’s weekly wage.

Under the employer and insurer's interpretation, which in essence first applies the maximum compensation rate to limit benefits and then calculates a percentage reduction, an anomalous result is created. The surviving spouse in the present case, had there been no surviving dependent children, would have been eligible for a spousal dependency benefit of 50 percent of the employee's wage at the time of injury for 10 years, subject to the maximum rate limitation of subdivision 20 and subject further to annual adjustments under Minn. Stat. §176.645. As we have noted, the overall scheme of the statute reveals that this spousal dependency benefit, having been deferred during the children's dependency, again becomes applicable at the end of the dependency of the children. Were we to read the statute in the manner suggested by the employer and insurer, the surviving spouse here would not regain her full benefit entitlement, rather she would be paid at a rate (disregarding adjustments under section 176.645) based on 75 percent of \$360.00, or \$270.00. This method would also create a disparate impact in all cases where the maximum compensation rate is implicated, reducing spousal benefits below the maximum rate only where surviving dependent children are present, but not where there are no dependent children at the time of the employee's death. We think such an anomalous result is wholly inconsistent with the statutory scheme, and we do not think such a result was intended by the legislature.

Accordingly, we agree with the conclusions of the compensation judge, that the employee's surviving spouse remains entitled to dependency benefits at the maximum compensation rate under the specific facts in this case.

CONCURRING OPINION

WILLIAM R. PEDERSON, Judge

The goal of all interpretation and construction of statutory language is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16. Our dissenting colleague insists that the meaning of Minn. Stat. § 176.111, subd. 8, is clear and free from all ambiguity and that therefore construction of the statute is unwarranted. Because the provisions of Minn. Stat. § 176.111 appear to me to be interdependent, I cannot agree that the intention of the legislature can be ascertained in this instance without considering the scheme of the entire statute. Accordingly, I would affirm the decision of the compensation judge.

DISSENTING OPINION

DEBRA A. WILSON, Judge

I must reluctantly dissent. The majority's application of the statute would appear to produce an equitable result for those surviving spouses, with dependents, whose benefits have already been limited by application of the maximum compensation rate. To achieve this result, however, the majority is forced to engage in an unwarranted "construction" of statutory provisions that are entirely clear on their face. Pursuant to Minn. Stat. § 176.111, subd. 8, this surviving spouse is now entitled to weekly benefits "at a rate which is 25 percent less than the last weekly workers' compensation benefit payment . . . while the surviving child was a dependent" (emphasis added) -- that is, 25% less than the last payment she received prior to the end of her children's dependency. Nothing about the pertinent language even hints at ambiguity.

When the meaning of a statute is apparent from its language, no further statutory construction is permitted. See McCaleb v. Jackson, 307 Minn. 15, 239 N.W.2d 187 (1976); see Minn. Stat. § 645.16 (“where the words of a law . . . are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit”). And, while it can be argued that the legislature did not envision how Minn. Stat. § 176.111, subd. 8, would affect the surviving spouses of high wage earners, courts may not supply that which the legislature inadvertently overlooks. Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588 (1971). Application of the maximum compensation rate always affects high wage earners adversely, but it is the legislature’s role to make such policy determinations. It is not this court’s function to second-guess the wisdom of legislative enactments under the guise of statutory interpretation.

Because the statute in question is clear as to how to calculate this surviving spouse’s dependency benefits, I would reverse and apply the plain language of Minn. Stat. § 176.111, subd. 8.