

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-168

DAVONDALYN DANDRIDGE-SPRIGGS INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF DEBORAH DANDRIDGE,
Claimant–Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Self-Insured Employer-Respondent.

Appeal from an September 14, 2015 Compensation Order
by Administrative Law Judge Joan E. Knight
AHD No. 14-266, OWC No. 665576

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 MAR 30 AM 8 45

(Decided March 30, 2016)

David M. Snyder for Claimant
Sarah O. Rollman for Employer

Before JEFFREY P. RUSSELL, LINDA F. JORY, and HEATHER C. LESLIE, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND ORDER

BACKGROUND

In a Compensation Order issued September 14, 2015 (CO) by an administrative law judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES), Davondalyn Dandridge-Spriggs's (Claimant's) claim for an award under the schedule for disability claimed to have resulted from injuries sustained by her now-deceased mother, Deborah Dandridge, was denied.

Claimant appealed the CO to the Compensation Review Board (CRB) by filing Claimant's Application for Review and memorandum of points and authorities in support thereof (Claimant's Brief). In this appeal, Claimant argues that the ALJ's finding that Claimant is not entitled to benefits under D.C. Workers' Compensation Act of 1979, as amended, D.C. Code §

32-1501, *et seq.*, (the Act) due to her failure to meet the criteria for a “dependent” or “child” is not supported by substantial evidence and is contrary to law.

Employer filed an Opposition to Claimant’s Application for Review and memorandum and points and authorities in support thereof (Employer’s Brief) arguing that the determination that Claimant is not a person identified under the Act to receive the claimed award is supported by substantial evidence and is in accordance with the law, and that the Act does not permit recovery by anyone other than a person specifically identified as a potential claimant under the Act.

The determination that Claimant is not entitled to an award personally as a dependent or child of the Decedent under the Act is supported by substantial evidence, is in accordance with the law, and is affirmed. The ALJ’s failure to consider the claim of the Estate was error, but because the decision on that issue is solely a matter of law, no remand is necessary, and because the failure to make an award to Claimant as Personal Representative of the Estate is in accordance with the law, we affirm the Compensation Order.

STANDARD OF REVIEW

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the Compensation Order under review are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. *See*, D.C. Workers’ Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, at § 32-1521.01(d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB must affirm a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where this panel might have reached a contrary conclusion. *Id.* at 885.

DISCUSSION AND ANALYSIS

We start by noting that Deborah Dandridge’s (Decedent’s) death was in no way connected with the work-related injury that she sustained while employed by WMATA (Employer) and hence this is not a claim for death benefits.

We also note that in the Joint Pre-Hearing Statement, the caption clearly identifies the claimant as “Ms. Davondalyn Dandridge-Spriggs, *As Personal Representative of the Estate of Deborah Dandridge*” (emphasis added).

Claimant in this case titles her first argument “Ms. Dandridge-Spriggs is entitled to payment of any permanent partial disability as the child and personal representative of the estate of Deborah Dandridge.” This is a compound formulation, combining two separate arguments into a single sentence.

The assertion that Ms. Dandridge-Spriggs is entitled to “any permanent partial disability benefits as the child ... of Deborah Dandridge.” is the only issue addressed in the CO. We will consider it first.

D.C. Code § 32-1508 (4) is the starting point of the analysis. It reads as follows:

(4) Any compensation to which any claimant would be entitled under paragraph (3) of this section [the schedule of permanent partial disability for specific body parts]... shall, provided the death arises from causes other than the injury, be payable in full to and for the benefit of the persons following:

(A) If there be a surviving spouse or domestic partner and no child of the deceased to such spouse or domestic partner;

(B) If there be a surviving spouse or domestic partner and surviving child or children of the deceased, one half shall be payable to the spouse or domestic partner and the other one half to the surviving child or children;

(C) The Mayor may in his discretion require appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement, the appointment for such a purpose shall not be necessary;

(D) If there be a surviving child or children of the deceased but no surviving spouse or domestic partner, then to such child or children....

The ALJ concluded that because it is undisputed that Ms. Dandridge-Spriggs is over the age of 18, and was not dependent upon the Decedent at the time of the work injury Ms. Dandridge-Spriggs does not meet the definition of “child” under the Act and she is not entitled to recover “as a child” of the Decedent.

If the Act did not provide a specific definition of “child”, there would be little question that subsection (D) would apply to these facts, and Ms. Dandridge-Spriggs would be a “person” to whom any benefits otherwise due to the Decedent would be payable. However, the Act does contain such a definition, found at D.C. Code § 32-1501 (4) and (5):

(4) “Child” includes posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least 1 year prior to the time of injury, and a stepchild or acknowledged child born out of wedlock dependent upon the deceased, but does not include married children unless wholly dependent on the employee.

(5) “Child”, “grandchild”, “brother” or “sister” includes only persons who are:

(A) Under 18 years of age, and also persons who, though 18 years of age or over, are substantially dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability; or

(B) Are students as defined herein.

We are not unsympathetic to Claimant’s argument that subsection (4) concerns who is entitled to receive, (or to whom an employer is obligated to pay), a schedule award that an injured

employee would have received but for the employee's unrelated death, and that the words "child" and "children" could be read in their literal, colloquial sense.

If the phrases "child" and "children" were used frequently throughout the Act and were sometimes meant to include anyone who is the natural or adopted offspring of an employee, we would perhaps agree that its use in this particular section and subsection is ambiguous. However, the only portions of the Act which deal with a "child" or with "children" are those that are concerned with entitlement to benefits where an injured worker has died, either as a result of the work-related injury or not.

Given that the legislature defined these words so specifically (and not in their commonplace usages) and then only employed them in these very limited instances, we are compelled to conclude that the ALJ's conclusion that Ms. Dandridge-Spriggs is not a person to whom the Act grants an entitlement to a schedule award to which the Decedent would have been entitled is correct.

As Employer points out, in matters of statutory interpretation, no provision should be interpreted so as to render it superfluous, which would be the case if we were to ignore D.C. Code § 32-1501(5) quoted above when interpreting D.C. Code §§ 32-1508(4) and (5).

The second argument subsumed within Claimant's issue statement is that "Ms. Dandridge-Spriggs is entitled to "any permanent partial disability benefits as the ... personal representative of the estate of Deborah Dandridge."

It could be argued that in enacting D.C. Code § 32-1508(4), the legislature intended to "cover all the bases" and provide for every possible factual situation, and that it assumed that *some* person or entity would be entitled to receive the award that would have otherwise gone to the injured employee.

That is the thrust of Claimant's argument, that "shall ... be payable", as used in § 32-1508 (4) implies that in no circumstance would such an award go unpaid. Having concluded that non-dependent persons over the age of 18 are not "children" under the Act, one could conclude therefore that the "mandatory" payment in full would be the property of the Estate.

As sympathetic as we might be to this argument, we must reject it. Employer argues with justification that only persons identified as being entitled to benefits under the Act may receive them, and that where the circumstances of a given case are such that no such specifically identifiable recipient exists, there is no obligation on the part of an employer to pay benefits to anyone.

The estate of a decedent is not included in the statutory list of persons to whom an award to which a deceased worker would otherwise be entitled is payable. It is certainly within the realm of possibility that the legislature did not consider payment of an award to an adult, self-sufficient non-spousal survivor of a decedent whose death was unrelated to the employment to be of sufficient social benefit to impose that cost on an employer. Indeed, beyond perhaps a certain uneasiness in permitting an employer to avoid liability that it would otherwise have had if there

been a spouse, domestic partner, or “children” as defined by the Act, there is little obvious societal benefit in imposing the financial obligation of payment of an award where the recipients are not in any sense dependent upon the earnings of the employee.

Lastly, we are not unmindful of the statutory maxim “*Expressio unius est exclusio alterius*”, or “The expression of one thing is the exclusion of another”. By listing the possible potential recipients of an award in such a way as to include less than the entire universe of possible recipients, it is reasonable to infer that the legislature intended to exclude any person or entity not so defined from entitlement to an award.

Inasmuch as this is a determination of the legal meaning of the Act, we do not need to remand the matter for the ALJ to consider it in the first instance. Accordingly, although it was error for the ALJ not to have considered the issue that was raised by Claimant, the error is nonetheless harmless.

CONCLUSION AND ORDER

The denial of an award to Claimant in her personal capacity or in her capacity as the Personal Representative of the Estate of Deborah Dandridge is in accordance with the law, and is affirmed.

So ordered.