

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

WERNER SCHMITT,
Claimant,

v.

EAGLE ROCK TIMBER, INC.

Employer,

and

LIBERTY NORTHWEST INSURANCE
CORP.,

Petitioner,

and

STATE OF IDAHO, INDUSTRIAL
SPECIAL INDEMNITY FUND,

Defendants.

IC 15000123

**ORDER ON PETITION FOR
DECLARATORY RULING**

Filed August 8, 2019

INTRODUCTION

This Petition for Declaratory Ruling arises from a work-related accident leading to the death of Werner Schmitt (“Decedent” herein) on November 1, 2016. Liberty Northwest Insurance Corp. (“Petitioner” herein) paid medical and funeral expenses associated with the claim, and conducted an investigation into whether or not Decedent was survived by any dependents to whom workers’ compensation benefits might be payable pursuant to the provisions of Idaho Code § 72-413. Having satisfied itself that no such dependents existed as of the date of Decedent’s death, Petitioner so notified the Commission and requested leave to satisfy its obligation to pay \$10,000 to the State Treasurer for the benefit of the Industrial Special

Indemnity Fund (“ISIF” herein) pursuant to the provisions of Idaho Code § 72-420. The Commission issued such Order on January 23, 2018. Thereafter, it became apparent that Decedent may, in fact, have had certain dependents at the time of his death, in particular his adult daughter and minor grandchild, both of whom resided with Decedent at the time of his death. These individuals eventually filed claims for dependency benefits with the Commission. Petitioner denied responsibility for the payment of benefits, but eventually settled the claim of the ostensible dependents by way of an Idaho Code § 72-404 settlement approved March 22, 2019. Thereafter, Petitioner sought return of the \$10,000 payment it had previously made for the benefit of the ISIF as allowed by other provisions of Idaho Code § 72-421. The ISIF refused to repay these funds arguing that Petitioner did not satisfy the requirements for repayment specified at Idaho Code § 72-421. This Petition for Declaratory Ruling by Petitioner followed.

FINDINGS OF FACT

1. At the time of his death, Decedent was employed by Eagle Rock Timber, Inc., Employer herein. On November 1, 2016, Decedent sustained a fatal injury as the result of an industrial accident arising out of and in the course of his employment.
2. Timely claim was made for medical and funeral benefits on or about August 16, 2017.
3. At the time of Decedent’s death, Decedent’s adult daughter, Alicia Schmitt (“Alicia herein”), and Alicia’s minor son, Ryver Duarte (“Ryver” herein), were residing with Decedent. No claim of dependency on behalf of either Alicia or Ryver was made within one (1) year following Decedent’s death.

Petitioner conducted its investigation to locate any Idaho Code § 72-410 dependents. By affidavit November 15, 2017, Julie Osler, an agent of Petitioner, averred that diligent action had failed to locate any dependents of Decedent.

4. Thereafter, on January 23, 2018, the Commission entered its Order requiring Petitioner to pay to the State Treasurer, for the benefit of the Industrial Special Indemnity Fund, the sum of \$10,000, as required by the provisions of Idaho Code § 72-420. That payment was made by Petitioner.

5. On or about June 22, 2018, Petitioner was notified of the dependency claims of Alicia, and her minor son, Ryver. An amended claim of dependency was filed on or about January 16, 2019.

6. Petitioner undertook further investigation in connection with the aforementioned claims of dependency. In the spring of 2019, Ryver, by and through his mother and natural guardian, Alicia, entered into a lump sum settlement agreement pursuant to which the dependency claim of Ryver was resolved. That document does not reflect that the parties to the agreement agreed that Ryver was a dependent of Decedent at the time of Decedent's death. Rather, the proposed lump sum settlement reflects that Petitioner specifically denied the dependency of Ryver, but proposed to resolve the dispute over his dependency by the payment of the sum of \$11,247.60. Contemporaneous with the proposed lump sum settlement, Petitioner sought the Commission's Order requiring the ISIF to refund the \$10,000 sum which was paid to it pursuant to the Commission's Order of January 23, 2018. The Commission declined to make such order, and advised Petitioner that if it wished to proceed with the proposed lump sum settlement, it should do so with the understanding that the issue of Petitioner's entitlement to recoup the \$10,000 ISIF payment was not resolved. In June of 2019, Petitioner advised the

Commission that it wished to proceed with the proposed lump sum settlement, leaving for subsequent resolution the secondary issue of whether or not Petitioner is entitled to recoup the \$10,000 payment to the ISIF.

7. By Order dated June 11, 2019, the Commission approved the proposed lump sum settlement which resolved the claim of dependency asserted by Ryver.

8. A demand was made by Petitioner on ISIF for the refund of the \$10,000 at issue, pursuant to the provisions of Idaho Code § 72-421. ISIF declined to make the repayment, evidently taking the position that the requirements of Idaho Code § 72-421 had not been met.

9. On or about July 1, 2019, Petitioner filed its Petition for Declaratory Ruling pursuant to the provisions of JRP 15. The Petition for Declaratory Ruling was supported by the parties' stipulation of fact and Petitioner's memorandum in support of the Petition for Declaratory Ruling.

10. In its Petition for Declaratory Ruling, Petitioner avers that based on the facts above stated, an actual controversy exists between Petitioner and the ISIF as to the interpretation and application of the provisions of Idaho Code § 72-421. Petitioner requests an Order from the Commission requiring the ISIF to refund the \$10,000 payment made by Petitioner pursuant to the Commission's Order of January 23, 2018.

11. Within fourteen (14) days following the filing of Petitioner's JRP 15 Petition, the ISIF filed its written response thereto. Within ten days following the ISIF's response, Petitioner filed its reply.

ARGUMENTS OF THE PARTIES

12. Idaho Code § 72-421 provides:

72-421. REFUND OF PAYMENT TO STATE AFTER DELAYED PROOF OF CLAIM BY MINOR OR INCOMPETENT DEPENDENT. If, after an employer has paid the sum provided for in section 72-420, Idaho Code, into the state treasury a claim is made and dependency proven by a person who during the one (1) year after the death into which a claim may be made was either a minor or mentally incompetent and who during the said year had no person or representative legally qualified under the provisions of the workmen's compensation law to make a claim in his behalf, such sum shall be repaid to the employer on the order of the industrial commission; provided, that nothing in this act shall be construed as extending or increasing the time during which a claim for compensation by a dependent may be made.

Petitioner contends that the dependency of Ryver has been proven and that during the one (1) year period after Decedent's death during which a claim should have been made, Ryver was a minor who during said year had "no person or representative legally qualified under the Workers' Compensation Law to make a claim on his behalf." Petitioner acknowledges that as the mother and natural guardian of her son, Alicia is generally authorized to represent the interests of her minor child. However, Idaho Code § 72-421 specifies that in order to obtain the benefit of that statute it must be demonstrated that Ryver did not have, within the one (1) year following Decedent's death, the services of a person or representative who was "legally qualified" to pursue a claim on his behalf. Petitioner asserts that per the specific language of the statute, since Ryver did not have the benefit of legal representation within one year following Decedent's death, Petitioner is entitled to the refund of the \$10,000 payment.

13. ISIF argues that as the "natural guardian" of her minor child, Alicia was legally qualified to make a claim on behalf of Ryver. Further, that the Judicial Rules of Practice and Procedure require Alicia to be represented by counsel in pursuit of the claim she brings on behalf

of Ryver in no wise denigrates the proposition that it is she who is the person or representative “legally qualified” to make the claim on behalf of Ryver.

JURISDICTION

14. JRP 15(C) specifies:

JRP Rule 15(C). Contents of Petition.

Whenever any person has an actual controversy over the construction, validity or applicability of a statute, rule, or order, that person may file a written petition with the Commission, subject to the following requirements:

1. The petitioner must expressly seek a declaratory ruling and must identify the statute, rule, or order on which a ruling is requested and state the issue or issues to be decided;
2. The petitioner must allege that an actual controversy exists over the construction, validity or applicability of the statute, rule, or order and must state with specificity the nature of the controversy;
3. The petitioner must have an interest which is directly affected by the statute, rule, or order in which a ruling is requested and must plainly state that interest in the petition; and
4. The petition shall be accompanied by a memorandum setting forth all relevant facts and law in support thereof.

The parties dispute the “construction, validity or applicability” of the provisions of Idaho Code § 72-421. Basically, the question before the Commission is whether Alicia was a person qualified to pursue the dependency claim of Ryver within the one (1) year period following Decedent’s death. If so, then the parties concede that Petitioner may not obtain a refund of the monies paid pursuant to the provisions of Idaho Code § 72-420. If not, then Idaho Code § 72-421 provides that Petitioner shall receive the refund of the sums in question. We conclude that Petitioner has identified a statute, a controversy which exists over its construction and that Petitioner has an interest which is directly affected by the statute in question. Finally, Petitioner has filed,

contemporaneous with its petition, a supporting memorandum setting forth the facts and law upon which it relies. The Commission concludes that Petitioner has satisfied the prerequisites for seeking a declaratory ruling under JRP 15 and that this matter is appropriately before the Commission on the petition. Further, having considered the evidence of record and the arguments of the parties, the Commission deems it appropriate to issue a written ruling on the petition pursuant to JRP 15F(3).

DISCUSSION AND FURTHER FINDINGS

15. Idaho Code § 72-410 defines dependents in pertinent part as follows:

72-410. DEPENDENTS. The following persons, and they only, shall be deemed dependents and entitled to income benefits under the provisions of this act;

(1) A child;

(a) Under eighteen (18) years of age, or incapable or self-support and unmarried, whether or not actually dependent upon the deceased employee;

...

(4) A grandchild, brother or sister only if under eighteen (18) years of age, or incapable of self-support, and actually dependent wholly upon the deceased.

Such dependents are entitled to benefits following the death of a decedent in the amounts, and for the periods of time, as calculated at Idaho Code § 72-412 and § 72-413. To be entitled to benefits, the relationship of dependency must exist at the time of Decedent's death. The claim of a dependent for benefits payable pursuant to Idaho Code § 72-413 must be made within one (1) year after the death of decedent. (See Idaho Code § 72-701). Per that section, claim may be made "by any person claiming to be entitled to compensation or by someone in his behalf." Here, Decedent's death occurred on November 1, 2016. The claims of Alicia and Ryver were not made until January 16, 2019, more than one (1) year following Decedent's death.

16. As discussed above, following Decedent's death, Petitioner conducted its own investigation into whether or not Claimant had any dependents at the time of his death to whom death benefits might be payable. On November 15, 2017, more than one (1) year following Decedent's death, Julie Osler filed her affidavit of due diligence, stating that she was unable to identify any individuals who might have been a dependent of Decedent at the time of his death. At the invitation of Petitioner the Commission entered its Order requiring the payment of \$10,000 to the State Treasurer for the benefit of the Industrial Special Indemnity Fund pursuant to the provisions of Idaho Code § 72-420. That section provides:

72-420. COMPENSATION TO STATE WHEN DEPENDENCY NOT CLAIMED OR PROVED. In case no claim for compensation is made by a dependent of a deceased employee and filed with the commission within one (1) year after the death, or in case a claim is made and filed within such year and no dependency proven, the employer shall pay into the state treasury the sum of ten thousand dollars (\$10,000) to be deposited in the industrial special indemnity account.

Therefore, where one of two things happens, Petitioner is obligated to make the \$10,000 payment to the State Treasurer: (1) no claim is made by a dependent within one (1) year after death; or (2) such claim is made but dependency is ultimately not proven. The Commission's Order of January 23, 2018, was appropriate simply because no claim of a dependent was made within one (1) year following Decedent's death.

17. However, the Act contemplates that from time-to-time it may happen that during the one (1) year period within which a claim must be made, a minor will have no person "legally qualified" under the workers' compensation law to make a claim on his behalf. In such case, where a claim is made after the one (1) year period, and dependency is subsequently proven, the Petitioner who made the \$10,000 payment anticipated by Idaho Code § 72-420 may apply to recover the \$10,000 payment.

18. Here, the first objection that might be raised to the Petitioner's effort to recover the \$10,000 payment is one alluded to by ISIF at page 7 of its Response to the Petition for Declaratory Ruling. Simply, while a claim was made more than one year after Decedent's death, dependency has not been "proven." The lump sum settlement approved by the Commission clearly reflects that Petitioner disputes the claims for dependency benefits brought by Alicia and Ryver. (See Exhibit F – Exhibits in Support of Petition for Declaratory Ruling at p.2). The lump sum settlement does nothing but recognize that the dispute over dependency has been resolved by the settlement; the Commission's Order approving the settlement does not prove dependency. Further, the facts stipulated by Petitioner and ISIF in connection with the subject Petition do not include a stipulation that Ryver's dependency is conceded. Per Idaho Code § 72-421, dependency has never been proven, and this failure to satisfy one of the requirements of Idaho Code § 72-421 is sufficient, by itself, to deny the application for refund.

19. However, we deem it appropriate to treat Petitioner's principle argument as well. Petitioner argues that Alicia, as the mother and natural guardian of Ryver is not a "personal representative legally qualified under the provisions of the workers' compensation law" to make a claim on Ryver's behalf. Petitioner concedes that per Idaho Code § 72-701, Alicia, as Ryver's mother and natural guardian, is a person ordinarily authorized to represent Ryver's interests. However, Petitioner contends that per the more specific language of Idaho Code § 72-421, Alicia is not a person "legally qualified" to make a claim for Ryver since she is not an attorney. Citing to JRP 2(A), Petitioner notes that the rule does not permit a natural person to be represented by anyone other than an attorney licensed to practice in the state of Idaho. The argument is that because Alicia was unrepresented by legal counsel, she was not "legally qualified" to make a claim on behalf of her minor son. However, JRP 2(A) has nothing to do with who is legally

qualified to pursue a claim on behalf of a minor child. Rather, it is intended to require such a legally qualified person to appear before the Commission through counsel. As ISIF has pointed out, the common law and the statutory scheme make it clear that the natural parent of a minor child has the right to make all decisions concerning such child's care, custody and control. This necessarily includes the natural parent's right to pursue a claim on behalf of a minor child. Hiebert v. Howell, 59 Idaho 591, 85 P.2d 699 (1938); Mahon v. City of Pocatello, 75 Idaho 166, 269 P.2d 1075 (1954). This is anticipated by the provisions of Idaho Code § 72-701, which allows a claim to be brought by a claimant "or by someone on his behalf." Also, that income benefits for death owed to a minor child are payable to the child's natural parent further reinforces our conclusion that such parent is legally qualified to pursue the claim for death benefits on behalf of such child. (See Idaho Code § 72-413(5)).

20. Petitioner argues that it is unfair to burden Alicia, a lay person ignorant of the statutory scheme, with the obligation to take action within a time certain on behalf of her minor child, or forego statutory benefits payable to Ryver for the death of his grandfather. However harsh this might appear, it is no different from the burden that the law places on every injured worker; notice must be given within a time certain and a claim must be made within a time certain or the injured worker is time-barred from receipt of benefits.

21. For the reasons set forth above, we conclude that Petitioner has failed to satisfy the requirements of Idaho Code § 72-421. Late filing of the claim is not excused because during the one (1) year following the death of Decedent, Ryver had a person or representative legally qualified to make such claim on his behalf. Further, although a claim has since been made, dependency has not been proven. Contrary to the representation of Petitioner, Ryver's

dependency was and continues to be disputed. Nor has the ISIF stipulated to Ryver's status as a dependent of Decedent at the time of his death.

22. For these reasons we conclude that Petitioner is not entitled to refund of the \$10,000 sum paid pursuant to the provisions of Idaho Code § 72-420.

DATED this ___8th___ day of ___August___, 2019.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas P. Baskin, Chairman

_____/s/_____
Aaron White, Commissioner

_____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __8th__ day of __August__ 2019, a true and correct copy of the foregoing **ORDER ON PETITION FOR DECLARATORY RULING** was served by facsimile processing machine upon each of the following persons:

JUDITH ATKINSON
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KEN MALLEA
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MICHAEL MCBRIDE
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/s/