



BRB No. 16-0162

GLEENDA LOGAN )  
(Widow of PAUL LOGAN) )

Claimant-Petitioner )

v. )

IAP WORLDWIDE SERVICES )

and )

INSURANCE COMPANY OF THE STATE )  
OF PENNSYLVANIA )

Employer/Carrier- )  
Respondents )

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )

Respondent )

DATE ISSUED: Nov. 14, 2016

DECISION and ORDER

Appeal of the Decision and Order Denial of Claim of Daniel F. Solomon,  
Administrative Law Judge, United States Department of Labor.

Lara D. Merrigan (Merrigan Legal), San Rafael, California, Paul M.  
Doolittle (Paul M. Doolittle, P.A.), Jacksonville, Florida, and Joshua T.  
Gillelan II (Longshore Claimants' National Law Center), Washington,  
D.C., for claimant.

Kenneth M. Labatte (Mound Cotton Wollan & Greengrass, LLP), New  
York, New York, for employer/carrier.

Helen H. Cox (M. Patricia Smith, Solicitor of Labor; Maia Fisher,  
Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore),  
Washington, D.C., for the Director, Office of Workers' Compensation  
Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denial of Claim (2014-LDA-00520) of Administrative Law Judge Daniel F. Solomon rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Decedent, claimant's husband, sustained significant brain injuries on June 24, 2005, when he was struck in the head by a large rock while working as a truck driver for employer in Iraq. Decedent was unable to work following this incident. Employer voluntarily paid decedent total disability and medical benefits. Decedent returned home to Missouri, where, in 2007, he renewed an acquaintance with claimant and they began dating. Claimant and decedent were married on July 7, 2007, and they purchased a house. Their household expenses, including the mortgage, were paid from their joint bank accounts, in which claimant's salary commingled with decedent's disability payments. HT at 127-128. Claimant took care of the couple's finances, paying their bills from their joint accounts. JX 3.

As time passed, decedent became increasingly frustrated and angry over his post-injury condition. He began drinking heavily, stopped taking his psychiatric medications, and in late November 2013, moved from the couple's home into a local motel. Claimant stated that concern for her safety led her to file a petition for a restraining order, because decedent was prone to anger, was not taking his medications, and was armed, HT at 76-77. Claimant stated she filed the petition against decedent in the hopes that "it might wake" him up for his own health and safety, with the ultimate goal being that he get help and move back in with her. JX 4. A hearing date on the restraining order was set for December 6, 2013. *Id.* On December 4, 2013, claimant and decedent talked on the telephone, with claimant informing him that she would withdraw the request for an order of protection if decedent would get help, resume his medications, and stop drinking. HT at 119. Decedent arranged for a friend to take him to the doctor the next day and to obtain refilled prescriptions. EX 1. Decedent, however, died from a self-inflicted gunshot wound that evening.

Claimant filed a claim for death benefits on January 14, 2014, alleging that decedent's December 4, 2013 death from suicide was a direct result of his June 24, 2005 work injury and resulting post-traumatic stress disorder (PTSD). 33 U.S.C. §909. Employer controverted the claim. A hearing was held before the administrative law judge on July 30, 2015. The administrative law judge requested that the parties submit post-hearing briefs on the threshold issue of whether claimant is properly classified as decedent's "widow" under the Act. In his decision, the administrative law judge found that claimant is not a "widow" as that term is defined by Section 2(16) of the Act, 33 U.S.C. §902(16), because she was not dependent upon the decedent under the criteria enumerated in Section 152 of the Internal Revenue Code, 26 U.S.C. §152. The administrative law judge also found that claimant did not establish that a conjugal nexus remained between her and decedent, even though they were living apart for justifiable cause. The administrative law judge thus denied the claim for death benefits. Decision and Order at 5-6.

On appeal, claimant challenges the administrative law judge's finding that she is not decedent's "widow." Employer responds, urging affirmance of the administrative law judge's decision. The Director, Office of Workers' Compensation Programs (the Director), responds in agreement with claimant that the administrative law judge erred in finding that she does not meet the definition of a "widow" pursuant to Section 2(16) of the Act. Claimant has filed a reply brief.

Claimant and the Director contend that, contrary to the administrative law judge's decision, the Internal Revenue Code Section 152(a) dependency test does not apply to determine spousal dependency under Sections 9(b) and 2(16) of the Act. Both add that under the appropriate partial dependency test, the evidence conclusively establishes that claimant was sufficiently dependent on decedent at the time of his death to qualify as a "widow" for purposes of the Act. Claimant and the Director thus request that the Board reverse the administrative law judge's finding that claimant is not a "widow" as that term is defined by Section 2(16) of the Act and remand the case for further consideration of her claim for death benefits.

Section 9(b) of the Act provides that death benefits are payable as follows:

If there be a widow . . . and no child of the deceased, to such widow . . .  
50 per centum of the average wages of the deceased, during widowhood . . .  
with two years' compensation in one sum upon remarriage . . . .

33 U.S.C. §909(b). The term "widow" is defined in Section 2(16) of the Act, 33 U.S.C. §902(16). It states:

The terms “widow or widower” includes [sic] only the decedent’s wife or husband living with or dependent for support upon him or her at the time of his or her death; or living apart for justifiable cause or by reason of his or her desertion at such time.

A claimant must establish her status as a “wife” and at least one of the Section 2(16) criteria in order to be entitled to death benefits as a “widow.” See *Ryan-Walsh Stevedoring Co. v. Trainer*, 601 F.2d 1306, 10 BRBS 852 (5<sup>th</sup> Cir. 1979); *Omar v. Al Masar Transp. Co./Int’l Trading Co.*, 46 BRBS 21 (2012); *Denton v. Northrop Corp.*, 21 BRBS 37 (1988). If, as in this case, the married couple is not living together at the time of the employee’s death, then the spouse must be “dependent upon” the decedent, or be living apart from the decedent for “justifiable cause” or by reason of the decedent’s desertion. If the separation was for justifiable cause, the Supreme Court has stated that the essential requirement for demonstrating “widow” or “widower” status under the Act is the maintenance of a “conjugal nexus” between the decedent and the claimant. *Thompson v. Lawson*, 347 U.S. 334 (1954); see also *Matthews v. Walter*, 512 F.2d 941 (D.C. Cir. 1975); *Meister v. Ranch Restaurant*, 8 BRBS 185 (1978), *aff’d*, 600 F.2d 280 (D.C. Cir. 1979) (table); see *Henderson v. Avondale Marine Ways, Inc.*, 204 F.2d 178 (5<sup>th</sup> Cir.), *cert. denied*, 346 U.S. 875 (1953).

The administrative law judge, citing *Welch v. Fugro Geosciences, Inc.*, 44 BRBS 89 (2010), applied the Internal Revenue Code Section 152(a) definition of “dependent,” i.e., “an individual that receives *over half of his or her support* from, in this case, the Decedent,” Decision and Order at 5 (emphasis in original), to find that claimant was not dependent upon decedent for support at the time of his death. *Id.* In reaching this conclusion, the administrative law judge relied on his finding that claimant’s tax returns “suggest she was not dependent on Decedent for at least half of her support,” *id.*, as well as the statement from claimant’s “hired psychiatric expert,” Dr. Richard Hall, that “Decedent ‘became dependent on his wife for financial support,’ JX 13, pg. 274.” *Id.*

As claimant and the Director correctly contend, the administrative law judge erred by applying the tax code definition of “dependent” in this case. There is no statutory requirement to apply Internal Revenue Code Section 152 to determine the dependency of a surviving spouse under Section 9(b) of the Act. In contrast to Section 9(d) of the Act, which explicitly requires “other [non-enumerated] persons” to “satisfy the definition of the term ‘dependent’ in section 152 of Title 25,”<sup>1</sup> 33 U.S.C. 909(d), in order to establish

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<sup>1</sup>Section 9(d) provides in pertinent part:

*If there be no surviving wife or husband or child, . . . then for the support of grandchildren or brothers or sisters, if dependent upon the deceased at the time of the injury, and any other persons who satisfy the definition of the*

entitlement to death benefits, Section 9(b), which applies in this case, requires only that the decedent's wife, who is not living with him, be "dependent for support upon him" at the time of his death.<sup>2</sup> 33 U.S.C. §902(16). Partial dependency is sufficient in determining "dependence" in cases in which Internal Revenue Code Section 152 is not applicable. *See Urso v. MVM, Inc.*, 44 BRBS 53, 56-57 (2010). Dependency in this context has its "common meaning, *i.e.*, 'not self-sustaining,' 'relying on for support,' 'helping to maintain the dependent in his customary standard of living.'" *Id.* (citing *St. John Stevedoring Co., Inc. v. Wilfred*, 818 F.2d 397, 399 (5<sup>th</sup> Cir.), *cert. denied*, 484 U.S. 976 (1987); *Texas Employers' Ins. Ass'n v. Shea*, 410 F.2d 56 (5<sup>th</sup> Cir. 1969); *Standard Dredging Corp. v. Henderson*, 150 F.2d 78, 80 (5<sup>th</sup> Cir. 1945)); *Bonds v. Smith & Kelly Co.*, 17 BRBS 170 (1985). Section 9(b), rather than Section 9(d), is applicable. Consequently, claimant's "dependency" must be resolved based on broader considerations than those identified in Internal Revenue Code Section 152.

The record in this case compellingly establishes that claimant was dependent upon decedent at the time of his death. Claimant presented evidence, and the administrative law judge found, that she and decedent "pooled their income, mutually owned property,

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*term 'dependent' in section 152 of Title 26, but are not otherwise eligible under this section, 20 percentum of such wages for the support of each such person during such dependency and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of injury, 25 percentum of such wages during such dependency.*

33 U.S.C. §909(d) (emphasis added). Section 9(d) thus provides that benefits may be granted to a "dependent" of decedent who is not otherwise eligible under Section 9 and who meets the definition of the term "dependent" in Section 152 of Title 26. 33 U.S.C. §909(d); 26 U.S.C. §152; *see Smith v. Mt. Mitchell, LLC*, 48 BRBS 1 (2014); *L.H. [Henderson] v. Kiewit Shea*, 42 BRBS 25 (2008). It is undisputed that claimant and decedent, in this case, were married and, though living apart, remained married at the time of decedent's death. Claimant's status as a "surviving wife," thus renders Section 9(d) inapplicable.

<sup>2</sup>Thus, the administrative law judge's reliance on the Board's decision in *Welch v. Fugro Geosciences, Inc.*, 44 BRBS 89 (2010), is misplaced. In *Welch*, the claimant, who was decedent's live-in fiancée at the time of his death, was not entitled to recover death benefits as a "widow" under Section 9(b), because it was undisputed that she and decedent were not married as defined by state law. The claimant was therefore subject to Section 9(d) and thus required to satisfy the definition of "dependent" under Internal Revenue Code Section 152 in order to establish entitlement to death benefits.

and filed joint tax returns.” Decision and Order at 5. Claimant also stated that she and decedent held joint checking and savings accounts from which their household expenses were paid, and that, more specifically, decedent regularly contributed his disability benefits to support the household. JX 4 at 20-21, 27-29, 63-72; HT at 22, 75, 93, 109, 126-137. Additionally, the record establishes that decedent’s disability benefit payments represented the greater part of the couple’s income.<sup>3</sup> JX 4 at 63. This evidence, specifically that decedent’s disability income represented more than two-thirds of the couple’s total income in 2013, along with claimant’s testimony that she and decedent pooled their resources, by combining her wages with his disability payments, to maintain the marital household during 2013, constitutes substantial evidence that claimant, at the time of decedent’s death, was, at least in part, dependent upon him for maintenance of her “accustomed standard of living.”<sup>4</sup> As the undisputed evidence of record establishes that claimant was dependent upon decedent for support at the time of his death, we reverse the administrative law judge’s finding that claimant is not a “widow” as defined by the Act.<sup>5</sup> 33 U.S.C. §§902(16), 909(b); *see generally St. John Stevedoring Co., Inc.*, 818 F.2d 397; *Urso*, 44 BRBS 53; *Bonds*, 17 BRBS 170. We therefore remand this case for the administrative law judge to address the remaining issues pertaining to claimant’s claim for death benefits.

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<sup>3</sup>According to the joint federal income tax return filed by claimant and decedent in 2013, claimant earned \$31,611 in wages from her job. JX 4 at 63. In comparison, decedent was receiving, at the time of his death in 2013, \$1,047.16 per week, or \$54,452.32 annually, in disability benefits under the Act, as well as a total of \$21,730 in Social Security disability payments. As such, decedent’s disability benefits, totaling \$76,182.32, accounted for 70.6 percent of the couple’s overall income for 2013. Because the disability benefits are not taxable, they are not reflected in the tax return. In addition, the tax return indicates that a rental property claimant owned before her marriage to decedent operated at a loss. *Id.*

<sup>4</sup>The statement of Dr. Hall, that decedent became dependent upon claimant for financial support, JX 13 at 274, was made in the context of explaining the diagnosis of PTSD. The records Dr. Hall reviewed indicate decedent made some poor financial decisions about which he was concerned and that the *management* of the couple’s finances was undertaken by claimant. *Id.* at 182. This evidence, contrary to the administrative law judge’s inference, does not detract from the evidence concerning the couple’s sources of income. *See n. 3, supra.*

<sup>5</sup>In light of this disposition, we need not address claimant’s alternative contention that she otherwise qualifies as a “widow” under the Act because she was living apart from decedent for a justifiable cause and, contrary to the administrative law judge’s finding, that a conjugal nexus continued to exist between claimant and decedent through the time of his death.

We decline claimant's request that, in order to protect claimant's right to a fair and impartial adjudication of her claim on the merits, the Board should direct that this case be assigned to a different administrative law judge on remand. Adverse or incorrect rulings alone are insufficient to demonstrate that the administrative law judge has exhibited bias. *See generally Orange v. Island Creek Coal Co.*, 786 F. 2d 724 (6<sup>th</sup> Cir. 1986); *Olsen v. Triple A Machine Shops, Inc.*, 25 BRBS 40, 45-46 (1991), *aff'd mem. sub nom. Olsen v. Director, OWCP*, 996 F.2d 1226 (9<sup>th</sup> Cir. 1993); *Raimer v. Willamette Iron & Steel Co.*, 21 BRBS 98 (1988). Moreover, the issues at the formal hearing included the compensability of decedent's death. The parties submitted their evidence on this issue, and the administrative law judge provided them with the opportunity to file briefs, notwithstanding his statement that he was surprised that a motion for summary decision had not been filed. *See* HT at 19, 139. Claimant does not contend that the administrative law judge restricted her ability to fully address the issue of the compensability of decedent's death.

Accordingly, the administrative law judge's finding that claimant is not a "widow" as defined by Section 2(16) of the Act is reversed. The case is remanded to the administrative law judge for further consideration of claimant's claim for death benefits.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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GREG BUZZARD  
Administrative Appeals Judge

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RYAN GILLIGAN  
Administrative Appeals Judge