

VERMONT DEPARTMENT OF LABOR AND INDUSTRY

)	File #	D-23887
)		
Clayton Shappy)	By:	J. Stephen Monahan
)		General Counsel
v.)		
)	For:	Barbara G. Ripley
The Orvis Company)		Commissioner
)		
)		Opinion # 4-93WC

APPEARANCES

Chester S. Ketcham, Esq., for the claimant
Keith Kasper, Esq., for the defendant

ISSUES

1. Did Claimant's injuries arise out of his employment with employer?
2. If so, is Mary Shappy entitled to compensation within the provisions of V.S.A. § 632 notwithstanding the Divorce Order of February 5, 1981.

THE CLAIM

1. Dependency benefits for pursuant to 21 V.S.A § 632.
2. Attorney fees and costs under 21 V.S.A. § 678(a).

STIPULATIONS

1. Clayton Shappy was an employee of The Orvis Company, Inc. within the meaning of the Act at the time of his death on May 20, 1991.
2. The Orvis Company, Inc. was the employer of Clayton Shappy within the meaning of the Act at the time of his death on May 20, 1991.

3. Chubb Insurance Group was the workers' compensation insurance carrier for The Orvis Company, Inc. at the time of Clayton Shappy's death on May 20, 1991.
4. Clayton Shappy died of a heart attack on May 20, 1991 while handing out awards at the company's plant in Manchester, Vermont.
5. Clayton Shappy's death occurred in the course of his employment with The Orvis Company, Inc.
6. Clayton Shappy's normal work activity for The Orvis Company, Inc. was that of an accountant for the company and he mainly worked at a desk with a minimum of physical activity.
7. There are no objections to the admission of Dr. Victor J. Pisanelli's letter November 11, 1991 as Dr. Pisanelli was Mr. Shappy's treating physician.
8. At the time of Clayton Shappy's death, it was unusual for Clayton Shappy to stand in excess of one hour, and he stood for more than one hour immediately prior to his attack.
9. Clayton Shappy had a coronary artery disease which resulted in an amputation of the right leg in November of 1990.
10. At the time of Clayton Shappy's death, it was not unusual for an Orvis employee to stand in excess of one hour while in the employment of the Orvis Company.
11. At the time of Clayton Shappy's death he was 64 years of age.
12. Clayton Shappy's average weekly wage at the time of his death was \$1,326.94, resulting in a compensation rate of \$564.00.
13. At the time of Clayton Shappy's death, and at all times relevant to the issues involved in this matter, Clayton Shappy and Mary Shappy resided in the same household.
14. Mary Shappy participated in employee benefit plans of The Orvis Company, Inc. through Clayton Shappy.
15. There is no objection to the admission of an Order of Divorce dated February 5, 1981 with the understanding that Mary Shappy is currently attempting to vacate the Order in the Rutland Family Court.
16. There are no dependent children of decedent Clayton Shappy within the meaning of the Act.
17. Mary Shappy is presently drawing Social Security benefits and thus the maximum recovery for which she would be eligible is 330

times the maximum weekly compensation within the provisions of 21 V.S.A § 635.

EXHIBITS

Pursuant to the stipulation of the parties the following exhibits are admitted into evidence:

Joint Exhibit 1: Letter of Victor J. Pisanelli, M.D., dated November 11, 1991

Joint Exhibit 2: Order of Divorce, dated February 5, 1981

CONCLUSIONS

1. Webster's defines the term "spouse" as "married person". WEBSTER'S NEW COLLEGIATE DICTIONARY (1977) at 1126. Therefore, the plain ordinary interpretation of the term "spouse" necessarily includes the requirement that the "spouse" be legally married to the other "spouse".

2. Professor Larson states as the general proposition that normal state domestic relations law controls whether or not the claimant is a dependent pursuant to the workers' compensation act. 2A LARSON'S THE LAW OF WORKMEN'S COMPENSATION section 62.21(a). Therefore, pursuant to applicable Vermont family law, the claimant cannot be a "spouse" of decedent, because she was not married to the decedent at the time of his death. Stahl v. Stahl, 136 Vt. 90 (1978) (Vermont does not recognize the common law marriage concept).

3. While other state statutes vary as to their definitions of dependents, an examination of some of these various cases supports the proposition that Claimant was required to be legally married to decedent at the time of his death in order to collect death benefits.

4. In Jamison v. Churchill Truck Lines, 632 S.W.2d 34 (Mo. Ct. App. 1982), the applicable statute required the claimant to show that she was "'a relative by blood marriage of a deceased employee....'" The claimant had divorced the deceased employee approximately one month before the fatal accident. The court held that absent a valid marriage, Claimant could not satisfy the dependency requirement in order to receive benefits due to the death of the employee. The court focused upon the legally recognized marital relationship in denying claimant's request for benefits. "A marriage is a civil contract. A decree of dissolution terminates that contract. The decree ends the parties' marital relationship...." Id. at 35 (citations omitted).

5. In Cyga v. Workmen's Comp. App. Bd., 524 A.2d 1078 (Pa. Cmwlth. 1987), the court focused on the plain meaning of the term "widow". The court concluded that by definition, in order to be considered a "widow" of the deceased employee, the claimant had

to have been married to the deceased at the time of his death. Id. at 1079.

6. In Crenshaw v. Industrial Comm. of Utah, 712 P.2d 247 (Utah 1985), the Utah Supreme Court upheld a denial of benefits to a claimant who lived with the deceased employee at the time of his death, had a minor child with the deceased employee prior to his death, and had planned to marry the deceased employee prior to his death. The applicable statute allowed for benefits to dependents who "bear[] the relation of husband and wife". Id. at 249. The court denied benefits based on the following rationale:

Under this statutory language, we have consistently held that the companion of a deceased employee is not entitled to share in the worker's death benefits in the absence of a legal and valid marriage between them. Wengert v. Double 00 Hot Shot, Utah, 657 P.2d 1343 (1983); Schuler v. Industrial Comm., 86 Utah 284, 43 P.2d 696 (1935); Sanders v. Industrial Comm., 64 Utah 372, 230 P. 1026 (1924). An unmarried companion is not considered a member of decedent's family or related as husband or wife, regardless of the level of personal commitment or good faith intention to assume a legal marriage relationship in the future.

7. In Lavoie v. International Paper Co., 403 A.2d 1186 (Me. 1979), the claimant had lived with the deceased employee for eight years prior to the accident. However, the court found that claimant was not entitled to benefits because she was not a member of his "family" as required by statute. The Maine Supreme Court had previously stated in Scott's Case, 104 A. 794 (Me. 1918) that the term "family" denoted "a collective body of persons who live in one house under a head or manager who had legal or moral duty to support the members thereof." Id. at 796. The court concluded that:

the rights of a party under the Workers' Compensation Act are purely statutory. Unless a claimant can be clearly said to come under the provisions of the statute, he cannot take. We find nothing in the Act as it now exists on the basis of the amendments which have been made of it since the decision in Scott's Case in 1918, which would indicate that the Legislature intended to enlarge the meaning of the word "family" under the Workers' Compensation Act to include a woman with whom a deceased employee was living in a union not solemnized by formal marriage. The decision in Scott's Case that a woman with whom a deceased employee was living in a union not solemnized by marriage cannot be dependent within the meaning of Workmen's Compensation Act (now Workers' Compensation Act) remains unchanged.

8. As the previous cases indicated, other states, with conceivably broader definitions of dependents than Vermont, have required that the alleged "spouse" of the deceased employee be legally married to the deceased employee at the time of his or her death in order to recover death benefits pursuant to the applicable workers' compensation act. Therefore, Claimant cannot be heard in the instant matter to state that she is entitled to death benefits as a "spouse" of the deceased employee when there exists a facially valid divorce decree existing between the decedent and Claimant.

9. Claimant was legally divorced from Clayton Shappy on February 5, 1981. Claimant asks the commissioner to ignore that decree because she now asserts that she was not competent at the time of the divorce, and thus the decree was improperly issued. The Commissioner has no authority to ignore a facially valid divorce decree. Claimant must pursue that issue in another forum.

10. Absent a legally recognized marital relationship, Claimant was not a "spouse" of Clayton Shappy at the time of his death. Claimant is barred from receipt of death benefits in this matter, because she is unable to meet any of the statutory criteria for the receipt of these benefits. 21 V.S.A. sections 632, 634. Should the Superior court subsequently void the divorce decree, claimant may reassert a claim, at which time the issue as to whether decedent's heart attack arose out of his employment will be decided.

ORDER

Therefore, based on the foregoing findings and conclusions, Claimant's request for death benefits is **DENIED**.

Dated at Montpelier, Vermont, this 14th day of June, 1993.



Barbara G. Ripley
Commissioner