

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

Clarence Barclay)	Opinion No. 12-05WC
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
Casella Waste Management)	For: Laura Kilmer Collins
)	Commissioner
)	
)	State File No. U-16117

Pretrial conference held on November 29, 2004
Case submitted on the briefs
Record closed on December 23, 2004

APPEARANCES:

Charles L. Powell, Esq., for the Claimant
William J. Blake, Esq., for the Defendant

ISSUE:

Does the Workers' Compensation Act include dependency benefits for a claimant's foster children?

DISCUSSION:

This matter came before the department on claimant's request for dependency benefits for three foster children, ages 2, 7 and 14 for whom he receives, or received, foster care allowances that total approximately \$300.00 per week.

When a worker is temporarily totally disabled as a result of a work related injury, "the injured employee, during the disability period shall receive \$10.00 a week for each dependent child who is unmarried and under the age of 21 years..." 21 V.S.A. § 642. "Child" includes a stepchild, adopted child, posthumous child and an acknowledged illegitimate child, but does not include a married child unless dependent." § 601(1) (emphasis added).

Although claimant acknowledges that the term "foster child" does not appear in the Act, he argues that foster children are included because they are not specifically excluded. He cites to § 632 and § 633 for the proposition that a child under eighteen is deemed a dependent regardless of actual dependency. Further, he cites to 3 V.S.A. § 631(3) that specifically includes a foster child as a "child" for group insurance purposes.

Section 601 (1) is clear and unambiguous and must, therefore, be construed in its ordinary sense. See *Grenafegé v. Dept. Employ. Security*, 134 Vt. 288, 290 (1976). A son or daughter

of an injured worker is entitled to a \$10 per week dependency benefits. That is true for a stepchild, adopted child, posthumous child and an acknowledged illegitimate child.

Under the principle of statutory construction called, *expressio unius est exclusio alterius*, the expression of one thing is the exclusion of another, claimant's attempt to read "foster child" into the Act is unavailing. See *Id.*

ORDER:

Therefore, this claim for dependency benefits for foster children is DENIED.

Dated at Montpelier, Vermont this 28th day of January 2005.

Laura Kilmer Collins
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.