

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H103974

KENNETH COBBS, SR., (DEC'D) EMPLOYEE	CLAIMANT
J.B. HUNT TRANSPORT, INC., EMPLOYER	RESPONDENT
INDEMNITY INSURANCE CO. OF NA, INSURANCE CARRIER	RESPONDENT
ESIS, INC., THIRD PARTY ADMINSTRATOR (TPA)	RESPONDENT

OPINION FILED JULY 3, 2023

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Little Rock, Pulaski County, Arkansas.

Claimant represented by the Honorable Mark Allen Peoples, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the Honorable Joseph H. Purvis, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On April 4, 2023, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing telephone conference was conducted on February 22, 2023, from which a Pre-hearing Order was filed on that same day. A copy of the said order and the parties' responsive filings have been marked as Commission's Exhibit No. 1 and made a part of the record without objection.

Stipulations

During the pre-hearing telephone conference, and/or during the hearing the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer-insurance carrier relationship existed among the parties at all relevant times, including on or about December 5, 2020, when the Claimant contracted COVID-19, in the course and scope of his employment with the respondent-employer.
3. The Claimant died on December 26, 2020, due to COVID-19, at which time he was married to Mrs. Alma Cobbs. At the time of the Claimant's death, the couple had custody of Mr. Cobb's two biological minor grandchildren, namely, However, since this time/currently, the minor children are in the custody of their biological paternal grandmother, Ms. Leadry B. Harris.
4. The Claimant's average weekly on December 5, 2020, was \$1,119.16, which entitles him to weekly compensation rates of \$711.00 and \$533.00.
5. At that time of Claimant's exposure to COVID-19 and his subsequent death, Governor Asa Hutchinson's Executive Order 20-35 was in force and effect.
6. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.
7. The Respondents agree that the Claimant's widow is entitled to payment for temporary total disability compensation from December 6, 2020, through December 26, 2020.
8. That the Claimant's widow is entitled to an 18% penalty on the temporary total disability compensation and funeral expenses, and that the Claimant's attorney is likewise entitled to an 18% penalty on the same for his attorney's fee in this

regard. At the start of the hearing, Respondents' attorney clarified that a controverted attorney's fee is not due on the funeral expenses under the statute.

9. That the Respondents have controverted this claim in its entirety. At the time of the hearing, the parties agreed to further stipulate that for attorney's fees purposes, the Respondents have controverted this claim in its entirety (T. p 11)

Issues

By agreement of the parties, the issues to be litigated at the hearing included the following:

1. Whether the Claimant's biological grandchildren are entitled to dependency benefits.
2. Whether the Respondents are liable for out-of-pocket-expenses medicals.¹
3. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

Contentions

The respective contentions of the parties are as follows:

Claimant: The Claimant contends:

- (a) That the Claimant was exposed to COVID-19 while in the course and scope of his employment on or about December 5, 2020, and was unable to work thereafter;
- (b) That he is entitled to temporary total disability (TTD) benefits at the weekly rate of \$711.00 from December 5, 2020, through December 26, 2020;
- (c) That Respondents controverted compensability of this claim but have more recently admitted compensability and pledged to pay TTD owed, but have failed to do so, despite repeated requests. Thus, Claimant is entitled a penalty for willful late payment;
- (d) That Claimant died as a result of his exposure to COVID-19 while on the job;

¹ Per an email to the Commission, the parties are trying to resolve the issue out-of-pocket expenses. As a result, this issue will not be addressed in this opinion. Instead, it has been reserved.

- (e) That Claimant's widow, Alma Cobbs, is entitled to weekly payments of 35% of Claimant's AWW from the time of his death until her death (or until she re-marries);
- (f) That Claimant's natural granddaughter was wholly dependent on Claimant for support at the time of his death and is thus entitled to weekly compensation of 15% of Claimant's AWW from the time of Claimant's death until her 18th birthday (25th birthday if she remains a full-time student);
- (g) That Claimant's natural grandson was wholly dependent on Claimant for support at the time of his death and is thus entitled to weekly compensation of 15% of Claimant's AWW from the time of Claimant's death until his 18th birthday (25th birthday if he remains a full-time student);
- (h) That Claimant's widow, Alma Cobbs, is entitled to reimbursement for funeral expenses in the amount of \$7,242.00 or the statutory maximum;
- (i) That Respondents controverted compensability of this claim but have more recently admitted compensability and pledged to pay funeral expenses owed, but have failed to do so, despite repeated requests. Thus, Claimant is entitled a penalty for willful late payment;
- (j) That Alma Cobbs is entitled to reimbursement for out-of-pocket medical expenses incurred as a result of Claimant's exposure to COVID-19 while on the job; and
- (k) That the benefits set forth above have been controverted and thus, undersigned counsel is entitled to maximum statutory attorney's fees.

Respondents: The Respondents contend:

A. That the foster children/grandchildren were not wholly dependent upon the Claimant at the time of his death; alternatively, at the very least they were only partially dependent and should qualify for no more than a small percentage of death benefits at best.

B. According to testimony of the Department of Human Services, Division of Children and Family Services Regulations, as of January 15, 2021, these children are no longer part of the foster children program and any monies due these foster children would no longer need to be placed in a trust.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to

hear the testimony of the Claimant and observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The evidence before me preponderates that the Claimant's minor grandchildren were partially (one-third) dependent on the Claimant for support at the time of his death.
4. The Claimant's attorney is entitled to a controverted attorney's fee on the indemnity benefits awarded herein.
5. All issues not litigated are reserved under the Arkansas Workers' Compensation Act.

Summary of Evidence

The record consists of the April 4, 2023 hearing transcript, comprising the following exhibits: Specifically, Commission's Exhibit No. 1 includes the Commission's Prehearing Order filed on February 22, 2023 and the parties' responsive filings; Claimant's Exhibit 1 is a Medical Exhibit consisting of seven numbered pages; Claimant's Exhibit 2 is an Amended Order Appointing Guardianship, consisting of three pages, it has been marked accordingly; Claimant's Exhibit 3 comprises three pages, which is an Amended Order Appointing Guardianship; a one-page Letter of Guardianship of the Estate for the grandson has been marked as Claimant's Exhibit 4; a second one-page Letter of Guardianship of the Estate for the granddaughter has been marked as Claimant's Exhibit 5; Respondents' Exhibit 1 is a Non-Medical Exhibit, which is the Oral

Deposition of Tracy Holloway, which was taken on March 24, 2023. It has been retained in the Commission's files.

During the hearing, the only witness to testify was the Claimant's widow, Mrs. Alma Cobbs.

Testimony

Mrs. Alma Cobbs

Mrs. Alma Cobbs testified during the hearing. She confirmed that she was married to the deceased Claimant, Mr. Kenneth Cobbs, Sr. Mrs. Cobbs confirmed that her husband passed away a day after Christmas, on December 26, 2020. She verified that when Mr. Cobbs passed, they had his two grandchildren living in their home with them. Mrs. Cobbs testified that the children had been in their home since August. She basically testified that they obtained custody of the children through the State foster care program. According to Mrs. Cobbs they had to go through training to become foster parents. Upon taking custody of the grandchildren, she testified that she had to quit her evening job.

Instead, Mrs. Cobbs maintained that she had to quit her job in order for her to be able to attend to the children. She got them up in the mornings and ready for school. In addition to putting a roof over the heads of the children, Mrs. Cobb testified that they supplied food, clothing, and a safe shelter for the children.

Mrs. Cobbs testified that the children are Mr. Cobbs' grandchildren. They are the children his son. At the time that they took custody of the children, the father of the children was incarcerated, and the mother was in drug rehab. She testified that she does not know how much of the money that Mr. Cobbs made went to the support of the children. Mrs. Cobbs confirmed that her husband made approximately \$55,000.00 year.

On cross-examination, Mrs. Cobbs was shown a document that listed only her husband as being the foster parent. She denied that she was aware that Mr. Cobbs was the only foster parent. However, they both went through the foster care training. Mrs. Cobbs did not supply a clear explanation of why they chose to be foster parents rather than adopt the children. She testified that they would have adopted the children had her husband not gotten sick. Mrs. Cobbs denied that receiving money from the State to help with the support of the children had anything to do with their decision. However, Mrs. Cobb finally agreed that receiving money from the State played a role in the decision as to whether they legally adopted the children as opposed to being foster parents.

Mrs. Cobbs denied having any knowledge of how much they were going to receive as foster parents from the State in support of the children. She also denied she knew how much money the children would receive from her husband's death or under the State foster care program. Mrs. Cobbs explained that she did not care about the money, because it is about the "kids." She testified that she quit her job so that she could make sure the children went to bed, were fed, had proper hygiene before going to bed, and she had to get them up and ready for school every day. Mrs. Cobbs confirmed that the children were never in daycare.

On redirect-examination, Mrs. Cobbs agreed that it was not about the money, it was about providing a home for the children because they needed someone to take care of them. Mrs. Cobbs went on to explain that she did not want the children on the streets.

Upon being questioned by the Commission, she admitted that they were to receive \$400.00 per month for each child from the State. She confirmed that they received a back payment of \$1,400.00 from the State. Mrs. Cobbs confirmed that the mother had visitation with the children, once a month.

On recross-examination, Mrs. Cobbs essentially testified that she did not continue with the care of the children after her husband's death because she needed help with them, and they were her husband's grandchildren.

The Oral Deposition of Tracy Holloway

The Respondents took the Oral Deposition of Tracy Holloway on March 23, 2023. She lives in Cabot, Arkansas. Ms. Holloway is employed by the Arkansas Department of Human Services. Ms. Holloway is the program administrator for foster care, adoption, and kinship connect. She manages the statewide foster care, adoption, and kinship programs.

Ms. Holloway confirmed that Mr. Cobbs signed an application to become foster parent for his two grandchildren. She testified that a provisional foster parent is what Mr. Cobbs was at the time of placement. There was no money for support until you are an approved home. She explained the training requirements and process for becoming an approved home.

She confirmed that Mr. and Mrs. Cobbs attended the training. They turned in licensing paperwork and on December 4, 2020, their home was officially opened as a relative foster care home. Mrs. Holloway confirmed that at that point, Mr. Cobbs became entitled to receive money from the State to help with the support of these children.

Under further questioning, Ms. Holloway confirmed that Exhibit 4 shows the financial support provided to foster parents. She agreed that she was referencing Paragraph 1 of Title IV E foster care payment, which states that the payments cover the cost of food, clothing, shelter, daily supervision, and school supplies. Ms. Holloway agreed that this money was going to Mr. Cobbs for support of the children. She confirmed that the money was for the purpose of making sure the entire burden to support these children, would not rest solely on the shoulders of the foster parent/

She confirmed that the children are no longer in the legal custody of the Department of Human Services.

Ms. Holloway stated that they provided some financial support to foster parents, but the State does recognize that the money does not fully support the children. As a result, the foster parents do bear some of the responsibility. She testified that financial support is based on age. At the time that Mr. Cobbs assumed foster care of the children, he was eligible to receive payments \$410.00 and \$440.00 a month for the two children. She confirmed that Mr. Cobbs was approved on November 16, 2020, and a check was generated on December 4, 2020, for \$850.00.

She was not certain if the children were in the care of the biological grandmother but said that they were with another relative.

On cross examination, Ms. Holloway testified that Mr. and Mrs. Cobbs received approximately \$1,500.00 from the State for the five months they had the children. She confirmed that the children are no longer in foster care. She confirmed that the trust account that had been set up by the State would no longer apply to the children should they be awarded workers' compensation benefits.

Discussion

A. Dependency Benefits

Here, the decedent had taken custody of his grandchildren in August of 2020. He became a foster parent to them in November. On December 26, 2020, Mr. Cobbs passed away due to COVID-19. The parties stipulated that the Claimant contracted COVID-19, while working and that this was a work-related death. At the time of his death, Mr. Cobbs and his wife had taken custody of his two minor grandchildren, through the State's foster care program. He received monthly benefits for the children.

The crucial issue for determination is whether the Claimant's grandchildren were "wholly" or "partially "dependent on him at the time of his death. I am persuaded that the Claimant's grandchildren were partially dependent on him for support at the time of his death. Ark. Code Ann. §11-9-527 (i) provides:

PARTIAL DEPENDENCY. (1) If the employee leaves dependents who are only partially dependent upon his or her earnings for support at the time of injury, the compensation payable for partial dependency shall be in the proportion that the partial dependency bears to total dependency.

The preponderance of the evidence shows that Mr. Cobbs was a foster parent for his two biological minor grandchildren. The preponderance of the evidence shows that the minor children were partially dependent on their grandfather for support and care. This conclusion is established by the testimony of the step-grandmother, Mrs. Alma Cobbs and Ms. Tracy Holloway, the program administrator for the foster care, adoption, and kinship program.

Although the grandchildren of the decedent herein may have received support from the State, their grandfather provided their daily support, both financially and as a father-figure, came from Mr. Cobbs, by his course of conduct he had formed with his minor grandchildren. The evidence shows that decedent's intent demonstrates that he assumed the duties and responsibilities of becoming the foster parent to his grandchildren, not only in providing partial financial support to them, but also in his caring for their general welfare. Such actions created a reasonable expectation of future partial support and care for his minor grandchildren, considering he was providing shelter and other support for the children at the time of his death. Mrs. Cobbs testified that she does not know how much of the Claimant's income went to support the children. However, at the time of the Claimant's death, he was entitled to receive a total of \$850.00 per month from the State for the two children. The children did not need daycare or any special services. These funds provided for more than 50% of the money needed to care for the children.

Based on all of the foregoing, the evidence before me preponderates that the Claimant's minor grandchildren were partially (one-third) dependent on him for support at the time of his death. Therefore, I find that the Claimant's minor grandchildren are each eligible beneficiaries and should each receive a partial share each in the dependency benefits.

B. Controverted Attorney's Fee

It is undisputed that the Respondents have controverted this claim for additional benefits as evidenced by their stipulation to conversion. Therefore, pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012), the Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein.

AWARD

The Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion. All issues not addressed herein are expressly reserved under the Arkansas Workers' Compensation Act.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809 (Repl. 2012). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W. 2d 57 (1995). Pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012), the Claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the Claimant.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE

