

## MEMORANDUM

TO: Rochelle Quiggle  
FROM: George J. Matz  
RE: Requirements of § 307(7) of the Workers' Compensation Act as it Pertains to  
Minor Children and Children Attending an Accredited Educational Institution  
DATE: June 18, 2010

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### QUESTIONS PRESENTED

- 1) Does § 307 of the Workers' Compensation Act deem that a minor child of a deceased injured worker is entitled to death benefits without demonstrating dependency?
- 2) Does § 307 of the Workers' Compensation Act deem that a child of a deceased injured worker who is attending an accredited educational institution is entitled to death benefits without demonstrating dependency?

### BRIEF ANSWERS

Under § 307 of the Pennsylvania Workers' Compensation Act (the "Act") and the relevant case law, a child of the decedent is entitled to benefits if they are: (1) under 18 years of age at the time of death; or (2) a full-time student at an accredited education institution who has not reached the age of 23. At a compensation hearing, a claimant need only establish that they are a child of the decedent in order to be entitled to benefits under § 307(7) of the Act.

Section 307 of the Pennsylvania Workers' Compensation Act ("Act") provides for the distribution of compensation in the case of death of an injured worker.<sup>1</sup> The pertinent language of § 307(7) provides that:

Compensation shall be payable under this section to or on account of any child . . . only if and while such child . . . is under the age of eighteen unless such child . . . is enrolled as a full-time student in any accredited educational institution when compensation shall continue until such student becomes twenty-three.<sup>2</sup>

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<sup>1</sup> Pennsylvania Workers' Compensation Act, Act of June 2, 1915, P.L. 736, *as amended* 77 P.S. § 562.

<sup>2</sup> *Id.* at ¶ 7.

Pennsylvania courts have interpreted this provision to mean that “legitimate, natural or adoptive children are entitled to benefits without regard to household membership or actual dependency.”<sup>3</sup>

Thus, death benefits shall be paid to a decedent’s children if they are either: (1) under 18 years of age at the time of death; or (2) full-time students, in which case, benefits terminate at age 23.<sup>4</sup>

In a Workers’ Compensation hearing, the traditional standard of proof requires that a claimant demonstrate the necessary factual elements by a preponderance of the evidence, and the standard remains the same for a claimant seeking death benefits under the Act.<sup>5</sup> The Pennsylvania Supreme Court noted that “a child’s right to receive workers’ compensation arises from his or her status as a child of the employee, and actual dependency upon the deceased is not required.”<sup>6</sup> The Pennsylvania Supreme Court continued that “the fact that decedent fathered a child who is under 18 years of age, without more, makes the child eligible for benefits.”<sup>7</sup> Thus, the fact that a decedent was not paying support for a child is irrelevant,<sup>8</sup> and entitlement is determined without regard as to whether or not the child shared a residence with the decedent.<sup>9</sup> Whether the claimant is a child under the age of 18 or a full-time student at an accredited education institution, the burden of proof remains the same.<sup>10</sup> Accordingly, a claimant need only demonstrate that he is a child of the decedent in order to establish entitlement to death benefits under the Act.

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<sup>3</sup> Hertz Corp. v. WCAB (Johnson), 724 A.2d 395, 397 (Pa. Cmwlth. 1999) (citing to Lehigh Foundations, Inc. v. WCAB (Mildred B. Kelly, et. al.), 395 A.2d 576 (Pa. Cmwlth. 1978)).

<sup>4</sup> Estate of Harris v. WCAB (Sunoco, Inc. and ESIS/SIGNA), 845 A.2d 239, 242 n. 11 (Pa. Cmwlth. 2004); see also Hoffer Transp. Co. v. WCAB (Bessie Gaymon), 443 A.2d 1381, 1383 (Pa. Cmwlth. 1982).

<sup>5</sup> Rossa ex rel. Rossa v. WCAB (City of Philadelphia), 839 A.2d 256, 260 (Pa. 2003).

<sup>6</sup> Rossa, 839 A.2d at 259 n. 4 (citing to Mohan v. Publicker Indus., Inc., 198 A.2d 326 (Pa. Sup. Ct. 1964) (“a child’s right to receive compensation arises from his status as a child of the employe[e] and actual dependency upon the deceased is not require”).

<sup>7</sup> Id. (citing to Hoffer, 443 A.2d at 1383).

<sup>8</sup> See Mohan, 198 A.2d at 328 (“children under 18 years of age are entitled to compensation . . . without proof that they were actually dependent . . . for support”).

<sup>9</sup> Lehigh, 395 A.2d at 578.

<sup>10</sup> See id. (finding that different categories of decedent’s children “share the same standards determining their eligibility and are entitled to benefits merely because of their status as children of deceased employees”).