

Workmen's Compensation: Dependents: Adult Who Had Been Supported by Deceased Stepfather Entitled to Compensation

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commodities for more than one job on which the contractor is working at the same time. For reasons of convenience the contractor does not have several bank accounts, but rather one running account and the burden which some courts would put on the materialman to determine the source of the payment and apply it to its separate account would affect adversely the course of modern business transactions. The courts suggest that surety companies should insist that contractors get waivers of liens from materialmen and that the contractors should have to turn these over to the builder, the city or private company, to qualify for the progress payments.

KEARNEY W. HEMP.

WORKMEN'S COMPENSATION—DEPENDENTS—ADULT WHO HAD BEEN SUPPORTED BY DECEASED STEPFATHER ENTITLED TO COMPENSATION.—This is a proceeding brought by one Frances Lindsay, under the Workmen's Compensation Act, for the death of her stepfather. The applicant, Frances Lindsay, resided with the deceased pursuant to an agreement whereby the applicant provided a home and paid the taxes thereon out of her own funds, while her deceased stepfather paid the current household expenses. The Industrial Commission, later affirmed by the circuit court, ordered the payment of compensation to the applicant as a dependent of the deceased employee. On appeal, *held*, judgment reversed on the grounds that the computation of the amount of compensation was imperfect, though the applicant, as a dependent of the deceased, was eligible for some compensation. *Duluth-Superior Milling Co. v. The Industrial Commission*, (Wis. 1937) 275 N.W. 515.

A dependent is one who is sustained by, or relies for support on, the aid of another, or who looks in some way to another for some of the reasonable necessities of life consistent with his or her social position, and who does so with some reasonable expectation of future support. *Koepfel v. E. I. Du Pont de Nemours Co.*, (Del. 1936) 183 Atl. 516. The issue of dependency, unless the Workman's Compensation Act specifically sets forth who shall be presumed to be a dependent, is a question of fact to be determined in accordance with the facts as they existed at the time of the accident. *Morrison Co. v. Industrial Commission*, 212 Wis. 507, 250 N.W. 396 (1933). Section 102.51 of the Wisconsin Statutes provides that there shall be a conclusive presumption that a wife is dependent upon her husband with whom she was living at the time of his death, that a husband is dependent upon a wife with whom he was living at the time of her death, a child under 18 dependent upon the parent with whom it was living, and a child over such age, but mentally or physically incapacitated, upon the parent with whom such child was living at the time of the parent's death. In the absence of such a statute there are no presumptions of dependency regardless of the relations of the parties. *Utah Fuel Co. v. Industrial Commission*, 67 Utah 25, 245 Pac. 381, 45 A.L.R. 882 (1926). The courts will not, on their own initiative, infer any presumption that aged parents are dependent upon their adult child with whom they reside. *Wisconsin Mutual Liability Co. v. Industrial Commission*, 184 Wis. 203, 199 N.W. 221 (1924); *Wisconsin Drainage Co. v. Industrial Commission*, 161 Wis. 42, 152 N.W. 460 (1915). Nor will the courts raise any presumption that grandchildren are dependent upon the grandparents with whom they reside, where the statute provides only for the dependence of a minor child upon its parents. *Universal Foundry Co. v. Industrial Commission*, (Wis. 1937) 272 N.W. 23. That case, however, held that an adopted child taken in and supported by the

deceased employee is conclusively presumed to be a dependent within the scope of the statute. The right of recovery is not limited to those parties set forth in the statutes. In the instant case, an adult stepdaughter was recognized as a proper party, upon proof of her partial dependence upon her deceased stepfather. In *Milwaukee Casket Co. v. Kimball*, 201 Wis. 516, 230 N.W. 627 (1930), it was held that a fifty-year-old divorced daughter living with her father and relying upon him for her sole support was a dependent within the scope of the compensation act. It was held in *Armenti v. Ryan*, (N.J. Dept. of Labor, 1936) 186 Atl. 517, that a niece, dependent upon the deceased employee for support, was eligible for compensation regardless of whether the relation was one of consanguinity or affinity. However, where a deceased son had contributed but \$35 to the support of his father, it was held that there was insufficient proof of dependency. *Baraboo v. Industrial Commission*, 185 Wis. 555, 201 N.W. 809 (1924). Similarly a wife who had been living apart from her husband for four years and had received no support other than a one dollar Christmas gift was held not to be dependent upon her husband. *Koepfel v. E. I. Du Pont de Nemours Co.*, (Del. 1936) 183 Atl. 516. The right to compensation is not limited to the legitimate dependents of the deceased employee, but is available to certain other classes who are capable of proving actual dependency. In *Beard v. Rickert Rice Mills*, (La. 1935) 164 So. 636, it was held that the illegitimate child of the mistress of the deceased, who was taken into the decedent's home and reared as a member of his family, was entitled to compensation. Contra: *Sharp v. Bourough of Vine-land*, (N.J. C.P. 1936) 183 Atl. 911, where it was held that three illegitimate children under age, residing with the deceased, did not fall within the statutory definition of dependents. In New York the acknowledged illegitimate child is recognized as a dependent. *Battalico v. Knickerbocker Fireproofing Co.*, 250 App. Div. 258, 294 N.Y. Supp. 481 (1937). In the matter of illegitimate marital relations there are opposing views. In *Summers v. Tennessee Eastman Corp.*, 169 Tenn. 335 87 S.W. (2d) 1005 (1935), it was held that where a woman married a man in good faith, not knowing that he had another wife from whom he was divorced only from bed and board, she might still be regarded as a dependent. In Wisconsin it was held that compensation for the death of an employee cannot be had by a woman with whom he was living as man and wife, where the marriage was contracted during the one year period following his divorce, on the theory that there was no marriage, the marriage being void on its face. *Armstrong v. Industrial Commission*, 161 Wis. 531, 154 N.W. 844 (1915). A person may be a dependent of an employee within the purview of the Workman's Compensation Act even though such dependence is only partial. A wife was held to be a dependent upon her deceased husband even though it was proved that she had sufficient property to supply her with the necessities of life. *Belle City Malleable Iron Co. v. Rowland*, 180 Wis. 344, 174 N.W. 899 (1923). The majority opinion adheres to the rule of the foregoing case requiring the applicant to look to the deceased for contributions as a means for supporting and maintaining himself in a manner congruent with his position in society. In the instant case, though the claimant was possessed of considerable property, she was nevertheless recognized as a dependent upon the deceased employee because she relied upon the deceased to a measurable extent for his contributions to her support. In Wisconsin such partial dependence is determined in accordance with Section 102.48 of the Wisconsin Statutes.

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