



Issue Date: 12 May 2011

*In the Matter of:*

[REDACTED]

*Claimant,*

v.

Case No. 2011-LDA-00002

**SALLYPORT GLOBAL SERVICES**

*Employer,*

*and*

**CONTINENTAL CASUALTY COMPANY**

*Carrier.*

**ORDER GRANTING PARTIAL SUMMARY DECISION  
*DENIAL OF EMPLOYER'S MOTION FOR SUMMARY DECISION AND  
GRANTING CLAIMANT'S CROSS-MOTION FOR SUMMARY DECISION***

This matter arises under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. § 1651 *et seq.* (the "Act"). Pursuant to my *Amended Notice of Hearing*, dated March 18, 2011, this case was scheduled for a formal hearing on May 26, 2011, in Washington, D.C.

On March 18, 2011, Sallyport Global Services and its Carrier, Continental Casualty Company, (hereinafter "Employer") filed a *Motion for Summary Decision*. In its motion, Employer seeks summary decision due to lack of material fact. Employer argues this claim for compensation is untimely, and therefore, is time-barred. Attached to the motion, Employer also filed Employer's Exhibit 1, the District Director's October 20, 2008, Compensation Order, and Employer's Exhibit 2, Employer's Form LS-208. I find these exhibits to be relevant and now enter them into the record, respectively, as "EX 1," and "EX 2." I note that no objections have been raised against the admission of Employer's exhibits. Therefore, I also find the authenticity of the exhibits deemed admitted. *See* 29 C.F.R. § 18.50 (authenticity of exhibits deemed admitted absent valid objection).

In response, on April 8, 2011, [REDACTED] (hereinafter "Claimant") filed an *Opposition to Defendants' Motion for Summary Decision* and a *Cross-Motion for Summary Decision*. Attached to the motion, Claimant also filed Claimant's Exhibits 1-3; 3(A-D); 4(A-D);

5(A-D); 6(A-C); 7(A-C); 8(A-C); 9(A-D); 10(A-D); 11(A-C); and 12-18.<sup>1</sup> I find these exhibits to be relevant and now enter them into the record, respectively, as “CX 1”-“CX 3” and “CX 3A”-“CX 3D” and so forth.

I note that no objections have been raised against the admission of Claimant’s exhibits, including an affidavit from Claimant’s counsel alleging that Employer, and its Carrier, intentionally omitted portions of the investigation reports concerning the dependency of Claimant on the decedent from the submissions to the Department of Labor. Employer did not respond to Claimant’s opposition, nor did it provide any evidence concerning the documentation before the District Director. Therefore, I also find that the Claimant’s exhibits are authentic. See 29 C.F.R. § 18.50 (authenticity of exhibits deemed admitted absent valid objection). Furthermore, I find that these exhibits, including the affidavit, are uncontroverted.<sup>2</sup>

#### APPLICABLE STANDARDS

The purpose of summary decision is to promptly dispose of actions in which there is no genuine issue as to any material fact. *Green v. Ingalls Shipbuilding, Inc.*, 29 BRBS 81 (1995); *Harris v. Todd Shipyards Corp.*, 28 BRBS 254 (1994). The evidence and inferences are viewed in the light most favorable to the non-moving party. *Dunn v. Lockheed Martin Corp.*, 33 BRBS 204, 207 (1999). Summary decision is appropriate when the record “show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). See also 29 C.F.R. § 18.40. No genuine issue of material fact exists when the “record taken as a whole could not lead a rational trier of fact to find for the non-moving party.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The party moving for summary judgment has the burden of establishing the “absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

29 C.F.R. §§ 18.40 and 18.41 provide the governing regulations for a motion for summary decision. 29 C.F.R. § 18.40(d) (motion for summary decision) sets forth in part:

The administrative law judge may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The administrative law judge may deny the motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

Since I must evaluate the allegations of Employer’s motion for summary decision, I must draw all reasonable inferences in a manner most favorable to Claimant. See 29 C.F.R. § 18.40; Fed. R. Civ. P. 56(c). Upon considering Claimant’s cross-motion, I must draw all reasonable inferences in a manner most favorable to Employer.

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<sup>1</sup> I note here that the *Opposition to Defendants’ Motion for Summary Decision and Cross-Motion for Summary Decision* was addressed to and submitted in nine separate Defense Base Act claims all arising out of the same incident, with the same Employer and the same Carrier. Because the *Motion* addresses all nine cases, I will admit all attached exhibits into the record.

<sup>2</sup> See also discussion on Claimant’s Section 31(c) claim, *infra*.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### SUMMARY OF THE FACTS

I have reviewed the record as a whole, including Employer's *Motion for Summary Decision* and attached exhibits, and Claimant's *Opposition to Defendants' Motion for Summary Decision* and Claimant's *Cross-Motion for Summary Decision* and attached exhibits. Therefore, I accept the following summary of the facts. However, I note that in a motion for summary decision, I must draw all reasonable inferences in a manner most favorable to the non-moving party.

It is undisputed that [REDACTED] (hereinafter "the decedent") worked for Employer as an Iraqi translator. On October 29, 2006, the decedent and some co-workers were traveling by bus in Iraq. This bus was pulled over by a convoy of unknown, armed gunmen. These men boarded the bus and forced the decedent and his co-workers off the bus. The decedent and his co-workers were then shot and killed.

It is also undisputed that following the October 29, 2006, incident, Employer, and through its Carrier, investigated whether the decedent had any potential beneficiaries entitled to compensation under the Act. Agent [REDACTED] assisted in this investigation and collected evidence of dependency.

On October 20, 2008, the District Director issued a Compensation Order which held, according to Section 9 of the Act, the decedent did not leave any eligible beneficiaries. EX 1. *See also*, 33 U.S.C. § 909. Employer paid \$5,000 into the Special Fund pursuant to Section 44(c)(1). EX 2. *See also*, 33 U.S.C. § 944(c)(1). Subsequently, Employer applied to and received benefits under the War Hazards Compensation Act, 42 U.S.C., § 1701 *et seq.*, and Carrier was reimbursed for its payments.

## DISCUSSION

### 1. EMPLOYER'S MOTION FOR SUMMARY DECISION

In its *Motion for Summary Decision*, Employer argues this claim was untimely filed and should be dismissed. For the reasons set forth below, I deny Employer's motion.

#### *TIMELINESS OF CLAIM*

Employer states this claim arises under the jurisdiction of the Act and concedes this is a viable claim under the Act. However, Employer maintains this claim is time-barred as untimely filed and not subject to modification. Specifically, Employer cites to Section 13 of the Act and argues Claimant did not file notice of potential dependency within one year of the decedent's death, nor did Claimant file a claim for compensation with the Department of Labor within one year of the last payment of compensation. Employer notes Claimant's counsel submitted a letter to the District Director in December of 2009, but asserts this action was taken several years after the last compensation payment. Furthermore, Employer states, pursuant to Section 12 of the Act, Claimant failed to provide notice of entitlement to benefits within thirty (30) days of the date of injury or death. Additionally, Claimant did not seek modification of the District Director's Compensation Order within one year of its issuance, as required by Section 22 of the Act.

In response, Claimant argues the statute of limitations has not run and therefore, this claim is timely filed. Claimant asserts she never received a copy of the District Director's Compensation Order issued on October 20, 2008. Moreover, Claimant did not have actual notice of the Compensation Order until November 15, 2010.

Claimant also alleges Employer made misrepresentations to her, the decedent's family, and the Department of Labor. The insurance investigator, [REDACTED] met with the decedent's family, collected evidence of dependency, assured the survivors they would receive compensation, and even suggested the survivors open a bank account to receive periodic payments. CX 7A, ¶¶ 8-11; 13-14, 16, 19; CX 7C, 5-7, 25. Claimant relied on the statements of Carrier's representative. CX 7A, ¶¶ 12-16, 19. Claimant only received a single payment of \$290.23, but she did not receive any other benefits from Employer. CX 11A, ¶ 14.

Claimant further alleges Employer did not provide accurate reports of these investigations to the Department of Labor, specifically concerning the eligibility of the Claimant as the decedent's beneficiary. Carrier omitted pages of the reports compiled by its investigator. As a result of these omissions, the District Director found the decedent did not have any beneficiaries eligible for compensation. Because of these misrepresentations, Claimant argues Employer is estopped from asserting a timeliness defense.

Additionally, Claimant asserts extraordinary circumstances in Iraq, including the civil war and the vulnerability of Iraqi translators and their families in this unstable environment, also toll the statute of limitations. Despite the dangerous conditions, Claimant continued to pursue this claim and to inquire about its status with the insurance investigator. It was not until 2009 that a United Kingdom law firm began operations in the area and referred Claimant to counsel. Claimant then filed the instant claim for death benefits on November 19, 2009. CX 7, ¶ 8.

#### APPLICATION OF SECTION 13(A)

Section 13(a) states that, unless otherwise provided, the right to compensation for disability or death shall be barred unless the claim is filed within one year from the time the claimant or the beneficiary becomes aware, or should have become aware, of the relationship between the injury or death and the employment. 33 U.S.C. § 913(a). Additionally, if compensation is paid without an award, a claim may be filed within one year of the last voluntary payment. *Id.*

Section 20(b) provides a presumption that a claim is timely filed "in the absence of substantial evidence to the contrary." 33 U.S.C. § 920(b). *See also Stark v. Washington Star Co.*, 833 F.2d 1025, 20 BRBS 40 (CRT) (D.C. Cir. 1987). The burden is on the employer to demonstrate that a claim was filed more than one year after the date on which claimant became aware, or should have been aware, of the relationship between the injury and the employment. *See Horton v. Gen. Dynamic Corp.*, 20 BRBS 99, 201 (1987).

Employer argues this claim was untimely filed pursuant to Section 13, while Claimant asserts that the circumstances in this case warrant tolling the statute of limitations. I note that the underlying rationale of the Section 13 time limits is to ensure employers receive prompt notification of claims and to protect employers from defending stale claims. *See Downey v. Gen.*

*Dynamics Corp.*, 22 BRBS 203 (1989); *Grage v. J.M. Martinac Shipbuilding*, 21 BRBS 66 (1988). However, the Board has recognized that certain circumstances may justify tolling the statute of limitations. See *Grage v. J.M. Martinac Shipbuilding*, 21 BRBS 66 (1988), *aff'd on other grounds sub. nom. J.M. Martinac Shipbuilding v. Director, OWCP*, 900 F.2d 180, 23 BRBS 127 (CRT) (9th Cir. 1990); *Paquin v. Gen. Dynamics/Elec. Boat Div.*, 4 BRBS 383 (1976); *Blackwell Construction Co. v. Garrell*, 352 F.Supp. 192 (D.D.C. 1972).<sup>3</sup>

In *Blackwell Construction*, the D.C. District Court held the employer and carrier were estopped from raising the statute of limitations in a claim for death benefits. The court noted the doctrine of estoppel may be applied in Longshore and Harbor Workers' Compensation Act cases, and specifically, to prevent a defense on the statute of limitations under Section 13(a). 352 F.Supp. at 196-197. The court further stated "[i]t is well recognized that the Act is to be liberally construed in the light of its remedial and humanitarian purpose." *Id.* at 197 (citing to *Voris v. Eikel*, 246 U.S. 328, 333 (1953)). Therefore, the court declined to allow the employer and carrier escape liability "by reading into [the Act] technical restrictions on the tolling of the filing period which are inconsistent with the purpose of the Act." *Id.* at 197-198.

The Board cited to *Blackwell Construction* in both the *Paquin* and *Grage* decisions. In *Paquin*, the Board found the employer and the carrier were estopped from asserting the statute of limitations as a defense. 4 BRBS 383 (1976). While the statute of limitations is meant to provide fair notice of claims, in this case, the employer and carrier were fully aware of the claimant's condition. Thus, the Board stated that the purpose of Section 13(a) would not be served in this case. *Id.* at 386-387. The Board also noted the claimant had received voluntary payments, but when the payments were terminated, the claimant was not informed, nor was he informed the statute of limitations had begun to run. *Id.* at 387. Because the claimant "had been lured into a false sense of security as concerned his injury" the Board held this claim was not barred by the statute of limitations. *Id.*

The Board made a similar finding in the *Grage* decision. In that case, the Board noted the time limits of Section 13 should be strictly applied, but stated this strong policy may be outweighed when "claimant has been lulled into a false sense of security by employer regarding the filing requirements for his claim." 21 BRBS 66, 68-69 (1988) (internal citations omitted).

Upon review of the record, including all attachments and exhibits, I find this claim presents circumstances which justify tolling the statute of limitations. As previously noted, the purpose of Section 13 is to provide fair notice of claims. In the instant case, this purpose has been served. Employer had prompt notice of the decedent's death. See CX 7A, ¶¶ 7-8; CX 7C,

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<sup>3</sup> *But cf., V.M. [Morgan] v. Cascade Gen., Inc.*, 42 BRBS 48 (2008), *aff'd mem.*, 388 F.App'x 695 (9th Cir. 2010) (stating Section 13(c) contains specific grounds for tolling limitations period and equitable tolling not applicable). The court declined to find the statute of limitations was tolled on the basis of mental incompetence pursuant to Section 13(c). The claimant, a widow, argued her grief rendered her mentally incompetent to file a timely claim for death benefits, but the court rejected this argument. However, I do not find that this decision overturns the Board's previous holdings in *Grage v. J.M. Martinac Shipbuilding*, 21 BRBS 66 (1988), and *Paquin v. Gen. Dynamics/Elec. Boat Div.*, 4 BRBS 383 (1976)).

8-13. I also note Employer has not provided any evidence that it did not receive actual notice of the decedent's death.

There is no dispute that Agent ██████████ met with the Claimant, assisted in this investigation, and collected evidence of dependency. During the investigation, Claimant informed ██████████ of her dependency on the decedent. CX 7A, ¶¶ 3, 8-11; CX 7C, 6-7. ██████████ informed Claimant she was eligible to receive compensation and she would receive annual wages, in addition to funeral expenses. See CX 7A, ¶¶ 10-11. ██████████ also told Claimant to open a bank account and that he would work on her behalf. See CX 7A, ¶¶ 11, 13, 19; CX 7C, 6-7, 25.

Following the investigation, Claimant continued to pursue this claim and to inquire about its status with the insurance investigator, despite her own fears and the vulnerability of Iraqi translators and their families in Iraq. See CX 7A, ¶¶ 4, 6-7, 17, 19. Claimant relied on the agent's statements and believed she took the necessary action to receive compensation. See CX 11A, ¶¶ 12-17, 19. Claimant was never informed of her rights under the Act, or the statute of limitations under the Act. See CX 7A, ¶¶ 12, 18. Furthermore, Claimant did not receive a copy of Employer's Notice of Controversion, filed on January 25, 2007, nor was she served the October 20, 2008, Compensation Order issued by the District Director. See CX 7A, ¶ 12; EX 1 (Certificate of Filing and Service).

None of the above renditions of facts are controverted by Employer.

Considering all of these factors, which are substantiated by the record, I find Claimant reasonably relied on the statements and actions of ██████████ an agent of Employer and Carrier, and was lured into a false sense of security concerning her claim for compensation. Therefore, I conclude Employer is estopped from asserting the statute of limitations as a defense. Moreover, I note that the unstable environment in Iraq also provides extraordinary circumstances which support this conclusion. As a result, this claim is not time-barred, and I conclude it was timely filed.

#### APPLICATION OF SECTION 12

Employer also argues this claim was untimely filed pursuant to Section 12 of the Act. See 33 U.S.C. § 912. Section 12(a) states that notice of a compensable injury or death must be given within 30 days of the injury or death or within 30 days after the employee or beneficiary is aware of the relationship between the injury or death and the employment. *Id.* § 912(a). The Board has held that under Section 20(b), it is presumed the employer has been given sufficient notice pursuant to Section 12, in the absence of substantial evidence to the contrary. See *Shaller v. Cramp Shipbuilding & Dry Dock Co.*, 23 BRBS 140 (1989). See also *Stevenson v. Linens of the Week*, 688 F.2d 93 (D.C. Cir. 1982), *rev'g* 14 BRBS 304 (1981); *Avondale Shipyards v. Vinson*, 623 F.2d 1117 (5th Cir. 1980); *United Brands Co. v. Melson*, 594 F.2d 1068, 1072 (5th Cir. 1979); *aff'g* 6 BRBS 503 (1977); *Duluth, Missabee & Iron Range Ry. Co. v. U.S. Dep't of Labor*, 553 F.2d 1144 (8th Cir. 1977). Failure to provide notice will bar a claim unless a defense under Section 12(d) applies. To prevail, a claimant must demonstrate the employer had knowledge of the injury or death during the filing period, or the employer was not prejudiced by failure to provide timely notice, or the failure was excused. See 33 U.S.C. § 912(d).

In the instant claim, I find Employer had actual knowledge of the decedent's death. *See* CX 7A, ¶¶ 7-8; CX 7C, 8-13. The record includes several incident reports, dated from October 30, 2006, to November 12, 2006, written by employees of Sallyport Global Services and the police, and addressed to Employer, describing the October 29, 2006, incident, which resulted in the decedent's death. CX 7C, 8-14. Employer's investigation report also includes the decedent's death certificate, issued on October 30, 2006. *Id.* at 18. Additionally, following the decedent's death, Employer conducted an investigation to determine whether the decedent had any beneficiaries eligible to receive compensation under the Act. *See, generally*, CX 7C.

Upon review of the record, I find Employer had actual knowledge of the decedent's death, and I do not find substantial evidence to rebut the Section 20(b) presumption of sufficient notice. I also note Employer has not provided any evidence that it did not receive actual notice of the decedent's death. Furthermore, even if such evidence existed, I excuse Claimant's failure to file timely notice, as justified by the circumstances of this particular case. If notice was not given to the designated official, pursuant to Section 12(c), I find notice was given to an official of the Employer. Moreover, I find that Employer was not prejudiced by this failure to provide notice. The primary purpose of the Section 12 notice requirement is to facilitate effective investigations and to prevent fraudulent claims. *See Kashuba v. Legion Ins. Co.*, 139 F.3d 1273 (9th Cir. 1998). I find that this purpose has been served. Accordingly, I reject Employer's argument that this claim was untimely filed pursuant to Section 12 of the Act.

#### APPLICATION OF SECTION 22

Employer raises another timeliness defense pursuant to Section 22 of the Act. *See* 33 U.S.C. § 922. Section 22 provides that any party may request modification of a compensation award within one year of the last payment of compensation or rejection of a claim. *Id.* A compensation order becomes final within thirty (30) days after entry if it is not appealed. The one-year time period for modification begins to run on the date the decision denying the claim becomes final, not on the date of issuance. *See, generally*, 33 U.S.C. § 921(a) (effectiveness and finality of orders).

Even if the District Director's Compensation Order was a final compensation order, binding on the parties, which could only be modified pursuant to Section 22 procedure, the instant claim for benefits was filed within one year. The District Director issued the Compensation Order on October 20, 2008. Claimant then filed the instant claim for death benefits on November 19, 2009. CX 7, ¶ 8. Therefore, I reject Employer's argument that this claim was untimely filed pursuant to Section 22 of the Act.

#### CONCLUSION

In its motion for summary decision, Employer argues this claim for compensation is untimely, and therefore, time-barred. As set out above, I have rejected this argument and have found this claim to be timely filed. Employer has not provided sufficient evidence to the contrary, and upon reviewing the record as a whole, in a light most favorable to Claimant, I find no such evidence. Additionally, Employer presents no other substantial argument in support of its motion.

Furthermore, whereas Employer asserts that the initial claim for benefits was not timely filed under Section 13 of the Act, this does not entitle Employer to summary decision. I find equitable considerations call for equitable tolling in this case, and indeed, I find tolling the statute of limitations to be the appropriate action in this case. Accordingly, I deny Employer's *Motion for Summary Decision*.

## 2. CLAIMANT'S CROSS-MOTION FOR SUMMARY DECISION

Claimant brought a *Cross-Motion for Summary Decision*, arguing Claimant has proven dependency and that there are no genuine issues of material fact. Employer did not file a response to Claimant's cross-motion, and the filing deadline for such a response has since expired. See 29 C.F.R. §§ 18.4(c)(1) (five days added for filing by mail); 18.4(c)(3) (five days added for service by mail); 18.6(b) (providing ten days to respond to motions). For the reasons set forth below, I grant Claimant's cross-motion.

### **DEPENDENCY OF BENEFICIARY**

Claimant requests that I grant the *Cross-Motion for Summary Decision*, asserting Claimant has proven dependency and is entitled to summary decision as a matter of law. Claimant states Employer has not presented any evidence disputing the following elements: 1) the decedent was employed by Employer at time of death; 2) the decedent was killed in the course of employment; 3) Claimant is the mother of the decedent; and 4) Claimant was financially dependent on the decedent at the time of his death. Furthermore, Claimant notes Employer has conceded this case is a viable claim under the Act. See also *Employer's Motion for Summary Decision*, ¶ 4.

As stated above, I have found this claim to be timely filed. Additionally, Employer has already conceded this claim falls under the jurisdiction of the Act. Upon reviewing the record as a whole, in a light most favorable to Employer, I find the decedent was employed by Employer at the time of death and that the decedent was killed in the course of this employment. See, generally, CX 7; CX 7A-7C; *Employer's Motion for Summary Decision*. Employer has not presented, and I do not find, any evidence to the contrary. Therefore, I will now consider whether Claimant has established dependency, and thus entitlement to compensation under the Act.

### **APPLICATION OF SECTION 9(D)**

Section 9(d) provides that if the decedent has no surviving spouse or children, other familial dependents, including the decedent's parents, may be eligible for compensation. 33 U.S.C. § 909(d). Parents are entitled to death benefits if they establish that, at the time of decedent's death, they were dependent at least in part upon the decedent for the maintenance of their accustomed standard of living. *Urso v. MVM, Inc.*, 44 BRBS 53 (2010); *Henderson v. Kiewit Shea*, 39 BRBS 119 (2006); *Wilson v. Vecco Concrete Constr. Co.*, 16 BRBS 22 (1983); *Fino v. Bethlehem Steel Corp.*, 5 BRBS 223 (1976). See also, *Myers v. Bethlehem Steel Co.*, 250 F.2d 615 (4th Cir. 1957); *Vinnell Corp. of California v. Pillsbury*, 199 F.2d 885 (9th Cir. 1952). Parents are entitled to 25 percent of the average wages of the deceased. 33 U.S.C. § 909(d). All questions of dependency are determined as of the time of injury, which in this case, is also the time of the decedent's death. *Id.* § 909(f).

The Fifth Circuit has defined dependency under the Act by looking to its common meaning, e.g., not self-sustaining, relying on for support, helping to maintain the dependent in his customary standard of living. *St. John Stevedoring Co., Inc. v. Wilfred*, 818 F.2d 397, 399 (5th Cir.), *cert. denied*, 484 U.S. 976 (1987); *Texas Employers Ins. Ass'n v. Shea*, 410 F.2d 56 (5th Cir. 1969); *Standard Dredging Corp. v. Henderson*, 150 F.2d 78, 80 (5th Cir. 1945). The Board has adopted this approach and has held that the term dependent does not require an examination of state law. *Duck v. Fluid Crane & Constr. Co.*, 36 BRBS 120 (2002); *Bonds v. Smith & Kelly Co.*, 17 BRBS 170 (1985).

A beneficiary need only show partial dependency. *See Texas Employers Ins. Ass'n v. Sheppard*, 62 F.2d 122 (5th Cir. 1932) (partial dependency sufficient); *Ingalls Shipbuilding Corp. v. Neuman*, 322 F.Supp. 1229 (S.D. Miss. 1970), *aff'd*, 448 F.2d 773 (5th Cir. 1971) (beneficiary may be dependent on decedent even if also dependent on others). I must make a determination as to dependency based on all the circumstances of a particular case. *Duck v. Fluid Crane & Constr. Co.*, 36 BRBS 120, 126 (2002).

#### FAMILIAL RELATIONSHIP

The record includes two declarations of Claimant, [REDACTED] one regarding Employer's investigations and one in support of the claim for compensation. *See, generally*, CX 7A; CX 7B. In the declarations, Claimant asserts she is the mother of the decedent, [REDACTED]. *See* CX 7A, ¶ 1; CX 7B, ¶ 1; CX 7C, 5-6. This relationship is evidenced by Employer's investigation report, which also includes copies of Claimant's identification and her photograph. CX 7C, 16-17, 23. The record also indicates the decedent did not leave a surviving spouse or children. CX 7C, 5-6, 15, 18.

Section 9(d) provides that if the decedent has no surviving spouse or children, the decedent's parents may be eligible for compensation. 33 U.S.C. § 909(d). Upon reviewing the record as a whole, in a light most favorable to Employer, I find [REDACTED] is the mother of the decedent, [REDACTED] and as such, she may be eligible for compensation. Employer has not presented, and I do not find, any evidence to the contrary. Therefore, a familial relationship has been established between the decedent and the Claimant, [REDACTED].

#### FINANCIAL DEPENDENCY

Claimant is entitled to death benefits if she can establish that, at the time of decedent's death, she depended, at least in part, upon the decedent for the maintenance of her accustomed standard of living. *Urso v. MVM, Inc.*, 44 BRBS 53 (2010); *Henderson v. Kiewit Shea*, 39 BRBS 119 (2006); *Wilson v. Vecco Concrete Constr. Co.*, 16 BRBS 22 (1983); *Fino v. Bethlehem Steel Corp.*, 5 BRBS 223 (1976). *See also*, *Myers v. Bethlehem Steel Co.*, 250 F.2d 615 (4th Cir. 1957); *Vinnell Corp. of California v. Pillsbury*, 199 F.2d 885 (9th Cir. 1952). In this case, dependency must be determined as of the time of the decedent's death. 33 U.S.C. § 909(f).

Claimant states she was financially dependent on the decedent during the year prior to his death. CX 7A, ¶ 3; CX 7B, ¶ 3; CX 7C, 6. Specifically, she depended on the decedent to help pay for household expenses, such as food, clothing, medical treatment, transportation and

maintenance. CX 7B, ¶ 3. This dependency was also noted in Employer's own investigation reports. CX 7C, 6. Claimant also stated the decedent "was the main breadwinner of the family," as her other son was still in school and she is a widow. CX 7A, ¶ 3. *See also* CX 7C, 21, 26-27 (evidencing the death of decedent's father).

Upon reviewing the record as a whole, in a light most favorable to Employer, I find Claimant, at the time of decedent's death, was financially dependent, at least in part, upon the decedent. Employer has not presented, and I do not find, any evidence or arguments to the contrary. Therefore, I find Claimant, [REDACTED], has established that at the time of decedent's death, she was financially dependent upon the decedent, [REDACTED], and is thus entitled to compensation.

#### CONCLUSION

For the reasons described above, I find Claimant has established: 1) the decedent was employed by Employer at time of death; 2) the decedent was killed in the course of employment; 3) Claimant is the mother of the decedent; and 4) Claimant was financially dependent on the decedent at the time of his death. Employer has not provided any evidence to the contrary, and I find no such evidence. Upon reviewing the record as a whole, in a light most favorable to Employer, I find no genuine issue of material fact concerning the dependency of Claimant and her entitlement to compensation. Accordingly, in that regard, I grant Claimant's *Cross-Motion for Summary Decision*.

#### *INVESTIGATION PURSUANT TO SECTION 31(C) OF THE ACT*

Claimant's *Cross-Motion for Summary Decision* also requests this matter be referred to the District Director, OWCP, for an investigation of Employer's fraud or abuse pursuant to Section 31(c) of the Act. *See* 33 U.S.C. § 931(c). Claimant alleges Employer, and its Carrier, intentionally omitted portions of the investigation reports concerning the dependency of Claimant on the decedent from the submissions to the Department of Labor. As a result, the District Director's Compensation Order, issued on October 20, 2008, found the decedent had no eligible beneficiaries.

Section 31(c) provides:

A person including, but not limited to, an employer, his duly authorized agent, or an employee of an insurance carrier who knowingly and willfully makes a false statement or representation for the purpose of reducing, denying, or terminating benefits to an injured employee, or his dependents pursuant to section 909 of this title if the injury results in death, shall be punished by a fine not to exceed \$10,000, by imprisonment not to exceed five years, or by both.

33 U.S.C. § 931(c).

I decline to address the issue of whether Employer committed fraud or abuse pursuant to Section 31(c) of the Act. Neither an administrative law judge nor the Board have jurisdiction over this matter. *Mann v. P&O Ports of Virginia, Inc.*, BRB No. 06-0102 (BRB Aug. 15, 2006) (*unpub.*). Investigatory functions regarding alleged fraud lies with the District Director: *Methe*

*v. Gulf Best Elec. Inc.*, BRB Nos. 02-0721, 02-0721A (BRB July 18, 2003) (*unpub.*) (citing to the Division of Longshore and Harbor Workers' Compensation Procedural Manual). *See also, Paquin v. Gen. Dynamics/Elec. Boat Div.*, 4 BRBS 383, 387 (1976) (imposition of civil penalties is a ministerial act to be performed by the deputy commissioner, not the Board).

However, I have the discretion, though am not required, to refer Section 31(c) claims to the District Director, OWCP. *See Methé, supra.* I note that Claimant may also initiate a complaint with the District Director. *Id.* Upon careful consideration, I have decided to refer this matter to the District Director for an investigation if warranted by the facts. Accordingly, I grant Claimant's request, and the Section 31(c) claim is hereby referred to the District Director for further investigation.

### ORDER

As set out above, Employer's *Motion for Summary Decision* is hereby **DENIED**, and Claimant's *Cross-Motion for Summary Decision* is hereby **GRANTED**. I enter partial summary decision for Claimant as set forth above. I retain jurisdiction over all other matters not **ADJUDICATED** in this *Order* on summary decision. Any and all remaining issues shall be adjudicated at the formal hearing scheduled for May 26, 2011, in Washington, D.C.

**IT IS FURTHER ORDERED** that Claimant's Section 31(c) claim is hereby referred to the District Director for further investigation.

SO ORDERED



DANIEL F. SOLOMON  
Administrative Law Judge

Washington, D.C.



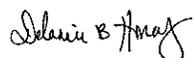
**SERVICE SHEET**

Case Name: [REDACTED] v. SALLYPORT\_GLOBAL\_SER

Case Number: 2011LDA00002

Document Title: **ORDER GRANTING PARTIAL SUMMARY DECISION**

I hereby certify that a copy of the above-referenced document was sent to the following this 12th day of May, 2011:



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