

RHODE ISLAND Lawyers Weekly

Widow prevails in appeal of workers' comp matter

By: Julie McMahon February 7, 2013



Based on the statutory language of the Workers' Compensation Act, Providence attorney Robert S. Thurston was convinced he had an open and shut case. Fortunately for his client, the Appellate Division of the Workers' Compensation Court found his arguments persuasive.

The panel recently decided that Colette Finucci, whose husband died after living with a work-related injury for more than two decades, should be compensated at the same rate as at the time of his death.

Finucci attended to her ailing husband for more than two decades after he was paralyzed in a fall at his job with Park Electric Co. When he died in 2008, the family's workers' compensation checks abruptly were cut in half to reflect the amount that he had been earning at the time of his injury in 1986.

A three-judge appellate panel reversed the trial court decision, agreeing with Finucci's claim that she was entitled to the same cost-of-living-adjusted compensation her husband had been getting at the time of his death.

"He received attention and care from his widow; that's why he survived," Thurston says. "That's what really brings inequity to the original decision."

The plaintiff widow was represented by Providence lawyer Stephen J. Dennis at trial. Thurston, who argued her appeal, recently spoke with Lawyers Weekly reporter Julie McMahon about the case.

Q. What made this case unusual?

A. This is an old case. It goes back to an injury suffered by an employee in 1986. He was basically knocked off of a ladder and suffered catastrophic injuries, which resulted in permanent paralysis. He died 22 years later as a result of those injuries. That's what's so unusual about this case. Usually, if a worker dies of his injuries, it happens pretty quickly. Here, there is so much time in between.

Q. How are benefits for a surviving spouse typically calculated in workers' comp cases?

A. For death benefits, there is a specific statute that allows for a 4 percent fixed cost of living adjustment on weekly benefits. That's a sure thing. While employees are living, they receive workers' compensation benefits with cost of living adjustments applied based on a yearly government index.

There's no discretion for that calculation. In this case, the trial court decided the widow would not receive the continuation of the employee's benefits, which had been adjusted for cost of living. But the statute is clear, and the appellate court reinforced the idea that she would receive a continuation rather than starting with a whole new ball game.

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a case in which the deceased employee didn't have a wife but had four dependent children, was helpful for showing that the court wasn't going to go out of their way to deny compensation just because the statute didn't mention dependent children specifically.

The ruling in *Cogswell v. Max Silverstein & Sons, Inc.* was necessary for my argument. In that case, the court said the dependent's benefits were a continuation of the husband's benefits.

Q. The appellate panel's decision discussed the intent of the Legislature quite a bit. Do you think the panel was on target with its interpretation of the statute?

A. They were definitely on point. If you look to both the letter and the spirit of the law, this was the right decision. The intent of the act was to apply the cost of living adjustment to the widow. To me, if you read the statute, that's what it says — that the pay is to be equal to the rate that the employee would have received. The language of the statute is decisive here, and if there were any questions, you look to the spirit of the act. It was passed to achieve a benevolent purpose.

Q. What did you take away from this case?

A. The court really did look at this case issue by issue. With workers' compensation cases, there are always a lot of factors, statutory and caselaw. I found that the court interpreted the wording of the statute and gave it the plain meaning. It showed that they aren't going to go out of their way to go against the spirit of the act, in this case, to deny the widow and her family the compensation they deserve.

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