

Raines, Owen, Dec'd

BENEFICIARIES

Dependent (RCW 51.08.050)

The worker's payments to his mother for his own room and board did not constitute "support" and she was therefore not dependent on the deceased worker at the time of his death. ...*In re Owen Raines, Dec'd*, BIIA Dec., 08,542 (1957)

Scroll down for order.

1 "IT IS ORDERED that the claim filed by Mrs. Hope Peterson, the
2 surviving mother, be approved for the payment of the statutory
3 allowance of \$300.00 and that in addition thereto the statutory allowance
4 for burial expense shall be paid and the claim thereupon closed."
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6 Petitioner thereafter, on January 28, 1957, informed the department by letter that her son, prior to
7 his death, was contributing to her support and on March 14, 1957, filed an appeal to this board from
8 the supervisor's order of January 14, 1957, alleging that she was entitled to compensation under
9 the act as a dependent of the deceased workman.
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12 By agreement of all interested parties the sole issue to be determined by this appeal is
13 whether or not the petitioner was, in fact, a dependent of her son at the time of his death.
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15 R.C.W. 51.08.050, defines dependent to mean certain specified relatives of the deceased
16 workman "who at the time of the accident are actually and necessarily dependent in whole or part
17 for their support upon the earnings of the workman." R.C.W. 51.32.050(6) provides in part that:
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19 "If the workman leaves no widow, widower or child, but leaves a
20 dependent or dependents, a monthly payment shall be made to each
21 dependent equal to fifty percent of the average monthly support actually
22 received by such dependent from the workman during the twelve
23 months next preceding the occurrence of the injury, but the total
24 payment to all dependents in any case shall not exceed seventy-five
25 dollars per month... The payment to any dependent shall cease if and
26 when, under the same circumstances, the necessity creating the
27 dependency would have ceased if the injury had not happened."
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30 R.C.W. 51.28.060 provides in part as follows:

31 "A dependent shall at all times furnish the Department with proof
32 satisfactory to the Director of the nature, amount and extent of the
33 contribution made by such deceased workman..." (Emphasis added)
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35 The claimant in this case did not comply, nor did she attempt to comply with the last statute above
36 quoted. In fact, she made no claim for an allowance as a dependent of the deceased workman.
37 Presumably the first knowledge the department had of any such contention by the petitioner was
38 when she filed her notice of appeal. However, the question of whether or not this appellate board
39 may properly consider a claim made for the first time in an appeal to the board and the question of
40 the claimant's failure to comply with R.C.W. 51.28.060 with reference to proof of dependency, were
41 not raised by the department and, as heretofore noted, its counsel stipulated and agreed that the
42 issue to be determined on this appeal was whether or not the petitioner was, in fact, a dependent of
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1 her son at the time of his death. The board will therefore consider the issue presented by
2 stipulation of the parties.
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4 The only evidence in this record was submitted on behalf of the petitioner and the material
5 facts established thereby are essentially as follows: The petitioner was divorced in 1945 from the
6 father of her son, Owen E. Raines, and his sister Gloria. Gloria married in 1946 and since that time
7 she and her husband have maintained their own home in North Bend, Washington. She has never
8 contributed anything toward the living expenses of the petitioner and her present husband, Charles
9 A. Peterson. The petitioner married Mr. Peterson in 1946 and since then they have maintained a
10 home (rent free) for themselves and Mrs. Peterson's son, Owen, in one of two houses located on a
11 small acreage near Snoqualmie, Washington, owned by Mrs. Peterson's parents who live in the
12 other house. Mr. Peterson, who is 62 years old, was employed steadily from about 1948 until
13 December 12, 1955. He did no work after that time, except work around the home, including the
14 cultivation of a garden. When he worked prior to December 12, 1955, Mr. Peterson earned \$16.00
15 per day and thereafter he received unemployment compensation in the sum of \$35.00 a week until
16 January, 1957.
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24 The deceased, Owen Raines, enlisted in the army in 1948 when he was only 15 years old.
25 However, he was discharged the following year because he was under age. He again entered the
26 army in January, 1953, and served until August, 1954. After his last discharge from the army,
27 Owen worked for a time for the Weyerhaeuser Timber Company and he then drew unemployment
28 compensation from approximately January through May, 1955. He then obtained employment near
29 his home from about June until December, 1955, and then again drew unemployment
30 compensation from December, 1955, through February, 1956, when he was no longer eligible. He
31 lived at home with his mother and stepfather during this entire period after he was discharged from
32 the army and during this period paid his mother \$15.00 per week when he was employed and
33 \$10.00 out of his unemployment compensation when he was unemployed. After February, 1956,
34 he continued to live at home for two or three months although unemployed and not drawing any
35 unemployment compensation. In April or May, 1956, he went to Oregon, where he obtained work
36 in the logging industry. Owen returned home about the middle of July, 1956, and then obtained
37 employment with the George A. Schaut Construction and Logging Co., a little over two weeks prior
38 to his fatal injury.
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1 When asked approximately how much her son contributed to her support after he was
2 released from the army, Mrs. Peterson answered:
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4 "A When he first got out of the service he had to pay his way and he
5 gave me some, at that time, but during the time he was on
6 unemployment he gave me \$10.00 a week."
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8 As heretofore stated, Owen gave his mother \$15.00 per week while he was employed, but she
9 testified that during the six-month period prior to his death, the only contribution he made was the
10 sum of \$30.00 which he sent to her from Oregon. However, she stated that he also gave her the
11 sum of \$100.00 from his soldier's bonus check in January, 1956, and bought two suits of underwear
12 for this stepfather in the fall of 1955. She also stated that while her son was living at home she "did
13 his washing - made his lunch and things like that."
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17 In the board's opinion, the evidence in this case as above summarized is insufficient to
18 establish that the petitioner was dependent upon her son for support at the time of his death or the
19 twelve-month period immediately preceding his death. It seems to the board that the only
20 reasonable inference which may be drawn from the petitioner's testimony that after her son got out
21 of the service "he had to pay his way," is that the money which he thereafter gave his mother was
22 considered as payment for his own board, room and laundry. The burden was on the petitioner to
23 establish that at the time of her son's fatal injury she was "actually and necessarily dependent in
24 whole or in part" upon her son's earnings for her support, and she presented no evidence to
25 establish that the sums of money she received from her son during the 12-month period
26 immediately prior to his death exceeded the value of the board and room furnished to her son.
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32 The necessary elements which must be shown to establish dependency are stated as follows
33 in 58 Am. Jur. Workmen's Compensation, Sec. 162:
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35 "As a very general proposition, it may be said that a dependent is one
36 who looked to or relied on the decedent for support and maintenance.
37 Reliance must have been placed upon the deceased employee to
38 provide the applicant for compensation, in some measure or to some
39 extent, with his or her future living expenses. And where this is the
40 case, it is not material that the contributions were made at irregular
41 intervals, or in differing amounts, nor that the money was paid in
42 accordance with the provisions of a contract. The purpose of the statute
43 is to provide the workman's dependent in future with something in
44 substitution for what has been lost by the workman's death, and,
45 consequently, to establish dependency the applicant for compensation
46 must show that he or she had reasonable grounds to anticipate future
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1 support from the decedent. This reasonable expectation of continuing
2 or future support and maintenance seems to be the true criterion as to
3 who are dependents."
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5 It is not necessary, of course, that a person be entirely and absolutely dependent on a workman for
6 the bare necessities of life, in order to qualify as a dependent under the workmen's compensation
7 act, but it is necessary that a deceased workman must have been "looked to, depended and relied
8 on, in substantial part by the family for means of reasonable support." (Emphasis added) McIntire
9 v. Department of Labor and Industries, 125 Wash. 370.
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12 In the case here under consideration, the evidence, in the board's opinion, falls far short of
13 establishing that the petitioner looked to, depended and relied on her son in substantial part for her
14 support. The deceased actually lived in his mother's home for a period of approximately two
15 months in the 12-month period prior to his death during which he made no contributions to his own
16 support. It is reasonable to infer that the payment of \$100.00 made by the deceased out of his
17 soldier's bonus to his mother, as well as the \$30.00 which he sent to her while he was in Oregon,
18 was considered to be for his board and room during the period when he was neither working nor
19 drawing unemployment compensation. Even if this were not true, the courts have generally held
20 that occasional gifts or contributions not relied on for support do not establish dependency. Horne
21 v. Curtis-Wright Corp. 271 App. Div. 1033, 68 N.Y. S. 864 (1947); Betor v. National Biscuit
22 Company, 85 Mont. 481, 180 Pac. 641 (1929); Ind. Comm. v. Likens, 23 Ohio App. 167, 155 N.E.
23 414 (1926); Pieters v. Drake-Williams-Mount Co. 142 Neb. 315; 6 N.W. (2d) 69 (1942); Rodriguez
24 v. Tex. Emp. Ins. Assn. (Tex. Civ. App.) 35 S.W. (2d) 510 (1931); Pollock Stockton Shipbuilding
25 Company v. Brown, (C.C.A. 7th) 185 F. (2d) 37 (1950).
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34 **FINDINGS**

35 In view of the foregoing, and after reviewing the entire record herein, the board finds as
36 follows:
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- 38 1. Owen E. Raines, sustained a fatal injury on August 16, 1956, while
39 employed by the George A. Schaut Construction & Logging Co. He was
40 23 years old at the time of his death and left no widow or children. On
41 or about January 4, 1957, the petitioner, Hope Peterson, mother of the
42 deceased workman, filed a "CLAIM FOR PENSION BY DEPENDENTS
43 OTHER THAN WIDOW OR CHILDREN" with the department of labor
44 and industries. Said claim, signed by the petitioner, contained the
45 statement that there were no dependents of the deceased workman and
46 the petitioner did not furnish the department with any information or
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1 proof as to "the nature, amount and extent of the contributions made by
2 such deceased workman," if any, to the petitioner's support. On
3 January 14, 1957, the supervisor of industrial insurance issued an order
4 finding that there were no "beneficiaries or dependent's" of the
5 deceased workman and approving the petitioner's claim for payment of
6 the statutory allowance of \$300.00 and the statutory allowance for burial
7 expense of the deceased workman. In her notice of appeal from the
8 last-mentioned order, filed with this board on March 14, 1957, the
9 petitioner alleged that she was "a beneficiary and dependent" of the
10 deceased workman and entitled to a dependent's benefits under the
11 workmen's compensation act. The appeal was granted by a board order
12 dated March 28, 1957.

- 13 2. The payments made by the deceased workman to the petitioner during
14 the 12-month Period immediately preceding his fatal injury did not
15 exceed the reasonable value of his board and room during that period
16 when he lived in the home of the petitioner and her husband.
- 17 3. The petitioner, Hope Peterson, was not actually and necessarily
18 dependent in whole or in part for her support on the earnings of her son,
19 Owen Raines, at the time of his fatal injury.

20 CONCLUSIONS

21 Based on the foregoing findings of fact, the board concludes:

- 22 1. This board has jurisdiction of the parties and subject matter of this
23 appeal.
- 24 2. The petitioner, Hope Peterson, was not a dependent within the meaning
25 of the workmen's compensation act at the time of the death of her son,
26 Owen Raines.
- 27 3. The order of the supervisor of industrial insurance issued herein January
28 14, 1957, should be sustained.

29 ORDER

30 Now, therefore, it is hereby ORDERED that the order of the supervisor of industrial insurance
31 issued herein January 14, 1957, be, and the same is hereby, sustained.

32 Dated this 14th day of November, 1957.

33 BOARD OF INDUSTRIAL INSURANCE APPEALS

34 /s/
35 J. HARRIS LYNCH Chairman

36 /s/
37 ARTHUR BORCHER Member