

Sundberg, Patrick

PERMANENT TOTAL DISABILITY(RCW 51.08.160)

Option II or III benefits under RCW 51.32.067

RCW 51.32.067 is quite clear that the option to receive actuarially reduced benefits for a spouse is a one-time option at the time the injured worker becomes eligible for the payment of permanent total disability benefits. The statute does not provide the discretionary ability to transfer actuarially reduced pension benefits to any and all future spouses. ...***In re Patrick Sundberg, BIIA Dec., 18 35409 (2019)*** [dissent] [*Editor's Note: The Board's decision was appealed to superior court under Yakima County Cause No. 19-2-04145-39.*]

Scroll down for order.

1 selecting Option I. If there isn't a current spouse, then Options II and III are presumptively
2 unavailable. The worker can't deprive a current spouse out of benefits unilaterally.
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4 Under Options II and III the worker will receive an "actuarially reduced benefit" in order to fund
5 the continuing benefit to the spouse/beneficiary.² The benefit under Option III would be reduced as
6 to the spouse/beneficiary but increase somewhat the amount payable to the injured worker during
7 lifetime. Again, both options require that surviving spouse be nominated by written designation duly
8 executed and filed with the Department.
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11 Mr. Sundberg argues that "surviving spouse" means whoever he is married to at the time of
12 his death irrespective of who he was married to when he made his selection of Option II (or III). The
13 statute is quite clear that the option to receive actuarially reduced benefits for a spouse is a one-time
14 option at the time the injured worker becomes eligible for the payment of permanent total disability
15 benefits. Mr. Sundberg wants the discretionary ability to transfer actuarially reduced pension benefits
16 to any and all future spouses.
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19 RCW 51.32.067 Subsections (3) and (4) allow the injured worker to undo or reverse a
20 reduction in the monthly pension amount created by Options II and III if the worker divorces the
21 spouse or if the spouse dies. Should one of these events occur, the worker can change the selection
22 back to Option I and receive full monthly pension payments without the deduction of the actuarially
23 reduced amount needed to fund the "surviving spouse" benefit. As there is no spouse at this point,
24 no consent is required to switch back to Option I. The statute is very specific that a change to a full
25 monthly pension benefit under subsections (3) and (4) is a one-time adjustment, permanent for the
26 life of the worker. This does not allow the worker to remarry and reselect a "surviving spouse" option
27 and then, perhaps, change back again to Option I should that spouse also die. The reversion to
28 Option I is clearly a "one-time adjustment" as plainly set forth.
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31 We cite with approval the industrial appeals judge's analysis of statutory construction. The
32 general rule of statutory construction is to start with the statutory language itself.³ If the statute's
33 meaning is plain on its face, you apply that meaning.⁴ Only if a provision remains susceptible to more
34 than one reasonable interpretation do we employ tools of statutory construction to discern its
35 meaning.⁵ If a statute is unambiguous, the meaning of the statute must be derived solely from the
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² RCW 51.32.067(1)(b) and (c).

46 ³ See *Tingey v. Haisch*, 159 Wn.2d 652, 657 (2007).

47 ⁴ *Tingey*, at 657.

⁵ *Tingey*, at 657.

1 language of the statute. When a statute uses plain language and its meaning is clear and
2 unambiguous, the Legislature's intention should be gleaned through the language of the statute, not
3 through extrinsic sources.⁶ The Industrial Insurance Act does not allow recipients of benefits to
4 choose from a menu of options. "An injured worker is entitled only to the benefits specified by statute,
5 no more and no less."⁷

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9 We disagree with Mr. Sundberg's assertion that the terms "worker's spouse" and "surviving
10 spouse" are statutorily ambiguous. Attempting to make a distinction between these terms would
11 actually create an ambiguity. A "worker's spouse" becomes a "surviving spouse" upon the death of
12 the worker. We note that the spouse/beneficiary must be named as a **specific individual**, that is,
13 "nominated by written designation," at the time of the award of pension benefits. The statute clearly
14 does not contemplate multiple or serial elections or "nominations" in the choice of subsequent
15 spouses for the purpose of subsequent pension payments. Once Mr. Sundberg elects Option II or III
16 his only remaining choice is to revert to Option I. The statutory framework does not allow the worker
17 to nominate a new individual after the death or divorce of the individual nominated at the time of the
18 award of pension benefits. The choice to revert to Option 1 is a "one-time adjustment for the life of
19 the worker."⁸ Our decision is consistent with the recent Court of Appeals, Division I decision in the
20 matter of *Scott v. Department of Labor & Indus.*⁹ The *Scott* decision was issued close in time to
21 Mr. Sundberg's motion for summary judgment and therefore not readily available for consideration or
22 citation as authority.

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30 Relief by means of summary judgement under Civil Rule 56 is correct. There is no issue of
31 material fact and the Department of Labor and Industries is entitled to judgement as a matter of law.

32 **DECISION**

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34 In Docket No. 18 35409, the claimant, Patrick J. Sundberg, appealed a Department order
35 dated October 3, 2018 that affirmed an earlier order dated September 18, 2018. The September 18,
36 2018 order confirmed Mr. Sundberg's decision to receive actuarially reduced pension payments
37 under RCW 51.32.067(1)(b), Option II, allowing his surviving spouse to continue to receive the
38 pension benefit if he died of a cause unrelated to the industrial injury. The September 18, 2018 order
39 also advised Mr. Sundberg that he could re-apply to receive full benefits under Option I if his
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45 ⁶ *Regence BlueShield v. The Office of the Ins. Comm'r.*, 131 Wn. App. 639, 646-647 (2006).

46 ⁷ *In re Lai Ping-Bazzell*, Dckt. No. 14 11874 (May 4, 2015) at 5, citing *In re Esther Rodriguez*, BIIA Dec., 91 5594 (1993).

47 ⁸ RCW 51.32.067(5).

⁹ 8 Wn. App.2d 473 (2019).

1 nominated beneficiary spouse preceded him in death or if he divorced. The October 3, 2018
2 Department order affirming the September 18, 2018 order is correct and is affirmed.
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5 **FINDINGS OF FACT**

- 6 1. On November 30, 2018, an industrial appeals judge certified that the
7 parties agreed to include the Jurisdictional History in the Board record
8 solely for jurisdictional purposes.
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10 2. Patrick J. Sundberg sustained an industrial injury on February 23, 2012,
11 and filed his claim that year. Mr. Sundberg was ultimately determined to
12 be totally and permanently disabled and was placed on the pension rolls
13 (permanent total disability benefits) on August 6, 2018.
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15 3. Patrick J. Sundberg selected Option II on the Department of Labor and
16 Industry's Married Option Pension Form under RCW 51.32.067(1)(b) to
17 provide surviving spousal benefits to his wife, Denise Sundberg, at the
18 time he was awarded pension or permanent total disability benefits.
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20 4. Denise Sundberg was the beneficiary nominated by Patrick J. Sundberg,
21 duly executed in writing and filed with the Department of Labor and
22 Industries.
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24 5. Denise Sundberg is currently living and still married to Patrick J.
25 Sundberg.
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27 6. The pleadings and evidence submitted by the parties demonstrate that
28 there is no genuine issue as to any material fact.

28 **CONCLUSIONS OF LAW**

- 29 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
30 and subject matter in this appeal.
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32 2. The Department of Labor and Industry is entitled to a decision as a matter
33 of law as contemplated by CR 56.
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35 3. RCW 51.32.067 states that, under Option II, an injured worker shall
36 receive an actuarially reduced benefit, which upon death shall be
37 continued throughout the life of and paid to the surviving spouse, child, or
38 other dependent as the worker has nominated by written designation duly
39 executed and filed with the Department. If the nominated spouse
40 predeceases the worker or the marriage is dissolved, a permanent, one-
41 time adjustment allows the worker to apply to receive benefits as
42 calculated under Option I.
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44 4. RCW 51.32.067 does not allow a worker to select actuarially reduced
45 benefits as calculated under Option II for subsequent spouses following
46 the death of or dissolution of the marriage from the spouse nominated by
47 written designation duly executed and filed with the Department of Labor
and Industries at the time of the award of pension benefits.

1 event he divorces or his spouse pre-deceases him, then he should have the ability to transfer that
2 benefit to a future spouse because he would still be in compliance with the statute as he would never
3 have made his one-time change. Should he never remarry, the Department would continue to pay
4 him that reduced amount until he either elected to take advantage of the one-time change in
5 RCW 51.32.067 or he passed away.
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8 Because I do not believe this option is in conflict with the statute, I dissent.
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10 Dated: October 11, 2019.
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12 BOARD OF INDUSTRIAL INSURANCE APPEALS

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15 ISABEL A. M. COLE, Member
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3 **Addendum to Decision and Order**
4 **In re Patrick J. Sundberg**
5 **Docket No. 18 35409**
6 **Claim No. AL-07690**
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8 **Appearances**

9 Claimant, Patrick J. Sundberg, by Smart Law Offices, per Darrell K. Smart

10 Employer, Bechtel National, Inc. (did not appear)

11 Department of Labor and Industries, by Office of the Attorney General, per Gigi I. Tsai

12 **Petition for Review**

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15 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
16 and decision. The claimant filed a timely Petition for Review of a Proposed Decision and Order issued
17 on June 20, 2019, in which the industrial appeals judge affirmed the Department order dated
18 October 3, 2018.
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