

Hoerner, John, Dec'd

BENEFICIARIES

Permanent total disability benefits

PERMANENT TOTAL DISABILITY (RCW 51.08.160)

Survivors' benefits

SUICIDE (RCW 51.32.020)

Permanent total disability at time of death (RCW 51.32.050(6))

RCW 51.32.020 only applies when compensability hinges on the cause of the death. That statute does not bar a claim for benefits by a surviving spouse where the worker's death by suicide takes place while the worker is in a status of permanent total disability. **...In re John Hoerner, Dec'd, BIIA Dec., 67,267 (1985)** [Editor's Note: Rule upheld by *Department of Labor & Indus. v. Baker*, 57 Wn. App. 57 (1990).]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

1
2 In Re: JOHN HOERNER, DEC'D.) DOCKET NO. 67,267
3)
4 Claim No. 7006840) DECISION AND ORDER
5)
6 _____)

7 APPEARANCES:

8
9 Widow-petitioner, Johanna Hoerner, by
10 Raekes, Rettig, Osborne and Forgette, per
11 Philip M. Raekes
12

13 Employer, George Grant, Inc.,
14 None
15

16 Department of Labor and Industries, by
17 The Attorney General, per
18 Laurie Connelly, Assistant
19

20 This is an appeal filed by the widow-petitioner on March 19, 1984
21 from an order of the Department of Labor and Industries dated
22 February 28, 1984, which denied benefits for Johanna Hoerner for the
23 reason that the decedent's death on December 21, 1983 was a result of
24 a suicide and that the suicide was the result of a deliberate and
25 conscious attempt on the part of the decedent to take his own life.
26 Reversed and remanded.

27 DECISION

28 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is
29 before the Board for review and decision on a timely Petition for
30 Review filed by the Department of Labor and Industries to a Proposed
31 Decision and Order issued on July 20, 1984, in which the order of the
32 Department dated February 28, 1984 was reversed, and the claim remanded
33 to the Department with instructions to award Johanna Hoerner a widow's
34 pension pursuant to RCW 51.32.050(6).

35 The general nature and background of this appeal are as set forth
36 in the Proposed Decision and Order and shall not be reiterated herein.

37 RCW 51.32.050(6) provides in material part:

38 "If the injured worker dies during the period of
39 permanent and total disability, whatever the cause
40 of death, leaving a surviving spouse, or child, or
41 children, the surviving spouse or child or
42 children shall receive benefits as if death
43 resulted from the injury ..."
44

45 RCW 51.32.020 provides in material part:

2/15/85

2 "If injury or death results to a worker from the
 3 deliberate intention of the worker himself or
 4 herself to produce such injury or death, or while
 5 the worker is engaged in the attempt to commit, or
 6 the commission of, a felony, neither the worker
 7 nor the widow, widower, child, or dependent of the
 8 worker shall receive any payment under this
 9 title."
 10

11 Quare: Given the above two statutory provisions, is the widow of
 12 a worker who, at the time of his death was in the status of permanent
 13 total disability due to an earlier industrial injury, entitled to the
 14 benefits provided for a surviving spouse under the Act where the
 15 worker's death resulted from his "deliberate intention" to take his
 16 own life?

17 Although both of the above-cited statutory provisions have been,
 18 in essentially the same pertinent language, part of our Workers'
 19 Compensation Act since its original enactment in 1911, the question
 20 presented, so far as we are aware, is one of first impression. See
 21 Laws of 1911, chapter 74, sections 5 and 6. The resolution of the
 22 question, we think, lies in the application of two fundamental
 23 precepts, to wit:

- 24 (1) The Act is remedial and its provisions are to be
 25 liberally construed in favor of its intended
 26 beneficiaries. Lowry v. Department of Labor and
 27 Industries, 21 Wn.2d 538 (1944).
 28
- 29 (2) Different sections or provisions of the same Act
 30 should be construed so as to harmonize and give
 31 effect to each and avoid a conflict. Beech v.
 32 Board of Adjustment of Snohomish County, 73 Wn.2d
 33 343 (1968).
 34

35 Viewed on their face, the two subject enactments appear to
 36 conflict. RCW 51.32.050(6) purports to grant survivors' benefits
 37 where the worker is permanently and totally disabled at the time of
 38 death even if the cause of death be suicide ("whatever the cause of
 39 death") whereas RCW 51.32.020 purports to deny benefits where death
 40 is by suicide ("deliberate intention") even if the decedent was
 41 permanently totally disabled at the time of death. Thus, we are
 42 seemingly confronted with the choice of which provision applies to the

43

44 exclusion of the other, thereby compromising the integrity of
 45 whichever provision is not given prevailing effect. Such an approach,

however,¹ assumes that both provisions speak to the same thing; in our opinion,² they do not.

In our view, RCW 51.32.020, the so-called suicide statute, is addressed to those situations where the claim for benefits hinges upon the³ compensability of the death itself -- i.e., the claim is that the death itself was industrially caused or related. On the other hand, under RCW 51.32.050(6), the cause of death is immaterial inasmuch⁴ as the claim for benefits is not predicated upon the death itself,⁵ but upon the decedent's industrial status at the time of death,⁶ to wit, his status of permanent total disability. Unlike a claim predicated upon the compensability of the death itself, a valid claim for benefits of a surviving spouse under RCW 51.32.050(6) results⁷ in no new or unexpected cost to the employer or the Accident Fund. Provision for such benefits had already been factored into the pension⁸ reserve of the permanently totally disabled worker. The amount⁹ necessary to support a disabled worker of that status, including the amount necessary for spouse's benefits (and children's benefits,¹⁰ if any) is routinely established and reserved at the time permanent¹¹ total disability is adjudicated. Such was the circumstance when M¹² Hoerner was originally placed on the pension rolls in 1970.

In sum, we hold that RCW 51.32.020 does not bar a claim for benefits¹³ by a surviving spouse where the worker's death by suicide takes place¹⁴ while the worker is in a status of permanent total disability. In making this determination, we are not unmindful of the court's¹⁵ opinion in McFarland v. Department of Labor and Industries, 188 Wa¹⁶. 357 (1936). In this respect, it is sufficient to note that the court's¹⁷ discussion therein as to the law regarding the widow's claim¹⁸ for pension, based upon an alternative allegation that her husband¹⁹ was permanently and totally disabled at the time of his

30

self-inflicted death, is dictum. The court's discussion in this regard²⁰ appears to have been prompted by its desire to distinguish

certain1 factual premises and legal contentions then before it from those p2reviously before it in Wintermute v. Department of Labor and Industr3es, 183 Wash. 169 (1935). Be that as it may, the court's actual holding in McFarland is based upon the "deliberate intention" languag5 of RCW 51.32.020. In a word, the court upheld the widow's claim f6r benefits on the ground that her husband's death was caused by the 7 industrial injury and was not due to his deliberate intent, which h8olding was completely dispositive of the case. That issue is not ~~even~~ present in this case.

A9 a final word, we would parenthetically note that the question herein10 decided was before this Board in In Re Abraham Winter, Dec'd., Claim N2. C-052803, Docket No. 63,541. The Proposed Decision and Order 13 in that matter, which reached a conclusion contrary to our holding4 herein, ultimately became the final disposition in the case inasmuch5 as no Petition for Review was filed by any party to the Board.16 In other words, the Board itself never passed upon the question7 at hand. We have now done so.

The Proposed Findings, Conclusions, and Order entered on July 20, 1984 a18 hereby adopted as the Board's final findings, conclusions, and order, and are incorporated herein by this reference.

It is so ORDERED.

Dated this fifteenth day of February, 1985.

23 BOARD OF INDUSTRIAL INSURANCE APPEALS

24

25

26

/s/ _____
MICHAEL L. HALL Chairperson

28

29

30

/s/ _____
FRANK E. FENNERTY, JR. Member

31

32

33

34

/s/ _____
PHILLIP T. BORK Member

35

36

37

38

39

40