

Christenson, Melvin, Dec'd

COMPUTATION OF BENEFITS

Burial expenses

Like medical benefits, burial expenses are simply a reimbursement for services rendered as opposed to prescribed benefits payable to the worker or to surviving beneficiaries. Such expenses should be paid in the amount applicable at the time the burial services were performed.*In re Melvin Christenson, Dec'd*, BIIA Dec., 88 1477 (1991)

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 IN RE: MELVEN CHRISTENSON,))	DOCKET NO. 88 1477
2 DEC'D))	
3))	FURTHER DECISION AND ORDER
4 CLAIM NO. G-121319))	ON REMAND FROM SUPERIOR COURT

5
6 **APPEARANCES:**

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8 Claimant, Melvin Christenson, Dec'd., by
9 Schroeter, Goldmark & Bender, P.S., per
10 Dee Dee White, Legal Assistant and
11 Sidney Stillerman Swan
12

13 Employer, Corning Fiberglass Corp., by
14 None
15

16 Department of Labor and Industries, by
17 The Attorney General, per
18 Laurel Anderson, Paralegal, and
19 John R. Wasberg, Assistant
20

21 This is an appeal filed on behalf of Melvin Christenson, Deceased, on March 31, 1988 from a
22 determination of the Department of Labor and Industries dated January 29, 1988 which notified Ruth
23 M. Christenson, surviving spouse of Melvin christenson, that the Department was awarding the sum of
24 \$600.00 for burial expenses of Melvin Christenson, who sustained injury on the 22nd day of
25 December, 1970 and died on June 6, 1986. Reversed and remanded.
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28 style="text-align:center">**PROCEDURAL HISTORY**

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30 The only issue presented in this appeal is which schedule of benefits applies to this claim for
31 the purpose of payment of funeral benefits.
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33 On June 20, 1989, a Proposed Decision and Order was issued affirming the Department order
34 awarding the claimant's estate funeral benefits based on the schedule in effect on the date Mr.
35 Christenson filed his application for benefits for asbestosis.
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38 The claimant filed a timely Petition for Review to the Proposed Decision and Order on July 24,
39 1989. On August 14, 1989, this Board issued an Order Denying Petition for Review. On August 18,
40 1989, the claimant filed a Notice of Appeal in the Superior Court of Washington for King County.
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42 On May 18, 1990, an Agreed Order for Remand to the Board of Industrial Insurance Appeals
43 was entered by a Superior Court judge. That order reversed the Proposed Decision and Order of
44 June 20, 1989 and remanded the appeal to the board for the taking of further evidence on the
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1 question of when the occupational disease of the claimant became "manifest" for purposes of
2 determining entitlement to funeral expenses.
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4 **DECISION**

5 The parties have filed a supplemental stipulation of facts in lieu of "taking further evidence" as
6 stated in the remand order. These facts deal with the difference between asbestosis, the disease for
7 which the claim was filed, and mesothelioma, the disease from which Mr. Christenson died. It is
8 apparent from our review of these stipulated facts that the estate is renewing,, as its primary argument,
9 that the schedule of benefits which should be used to determine the amount of funeral benefits, is the
10 schedule in effect on February 25, 1986, when Mr. Christenson was diagnosed as having
11 mesothelioma as a result of his asbestos exposure.
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13 We do not believe the estate's argument has a basis in law or fact and we agree with the
14 reasoning and conclusion of the Proposed Decision and Order. However, upon review of the record in
15 this case, we believe it is logical and correct to compare burial expense payments to medical aid
16 vendor payments and to conclude that, based on such a comparison, burial expenses should be paid
17 at the rate in effect at the time such services are performed, rather than the rate on the date of injury or
18 date of manifestation of a disease.
19

20 Burial expenses, like medical payments, are simply a reimbursement for services rendered (up
21 to a stated maximum) as opposed to prescribed benefits payable to the worker or to surviving
22 beneficiaries. The mere fact that they are covered in a statute rather than a Department rule does not
23 persuade us that the Legislature would agree that it was their intent for a worker's widow to be in the
24 position the Department has placed Mrs. Christenson with respect to the burial expenses incurred for
25 her husband's death. Burial expenses, considered in the context of cases such as this, are for
26 services provided for the worker's ultimate health care problem, i.e., death. We think the burial
27 expenses in this claim should be paid in the amount applicable at the time the burial services were
28 performed, namely, on and/or shortly after the date of the worker's death on June 6, 1986. Thus, in
29 our view, such expenses are payable in the actual amount thereof up to a maximum of \$2,000.00.
30 Laws of 1982, ch. 63,§ 18.
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32 After consideration of the Proposed Decision and Order, the Petition for Review and the entire
33 record before us, including the supplemental stipulation of facts, we believe the Department letter
34 dated March 31, 1988 is incorrect and should be reversed and the matter remanded to the
35 Department of Labor and Industries to issue an order awarding the estate burial expenses as provided
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1 in RCW 51.32.050(1) as amended in 1982. We hereby adopt Findings of fact Nos. 1, 2, 3, 4, and 5
2 and Conclusion of Law No. 1 from the Proposed Decision and Order. In addition, we make the
3 following finding and conclusions.
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6 **FINDINGS OF FACT**

- 7 6. Burial expenses most closely resemble medical aid payments in that they
8 are reimbursement for services rendered up to a stated maximum as
9 opposed to prescribed benefits.
10

11 **CONCLUSIONS OF LAW**

- 12 2. Burial expenses, as set out in RCW 51.32.050(1) most closely resemble
13 medical aid payments.
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15 3. Burial expenses, like medical aid payments, should be paid in accordance
16 with the law in effect at the time they are incurred.
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18 4. The reimbursement for burial expenses incurred by the estate of Melvin
19 Christenson should be determined by RCW 51.32.050(1) as it was
20 amended by the Laws of 1982, ch. 63, § 18.
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22 5. The determination of the Department of Labor and Industries as reflected
23 in its letter dated January 29, 1988 which ordered that burial expenses be
24 paid in the sum of \$600.00 is incorrect and reversed and the matter
25 remanded to the Department of Labor and Industries to make a
26 determination that the burial expenses incurred by the estate of Melvin
27 Christenson be paid in the actual amount, up to a maximum of \$2,000.00.

28 It is so **ORDERED**.

29 Dated this 2nd day of July, 1991.

30 BOARD OF INDUSTRIAL INSURANCE APPEALS

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33 /s/
34 S. FREDERICK FELLER Chairperson

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37 /s/
38 FRANK E. FENNERTY, JR. Member

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41 /s/
42 PHILLIP T. BORK Member
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