

Hursh, Dorsey

BENEFICIARIES

Permanent total disability benefits

PERMANENT TOTAL DISABILITY (RCW 51.08.160)

Beneficiaries

RCW 51.32.010 permits payment of permanent total disability benefits to a custodial parent where a minor was in legal custody of a divorced spouse because RCW 51.32.090(2), regarding payment of compensation for temporary total disability to the person actually providing support for a child, does not apply to payments for permanent total disability benefits. ...*In re Dorsey Hursh*, BIIA Dec., 90 6802 (1991)

Scroll down for order.

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

IN RE: DORSEY A. HURSH)	DOCKET NO. 90 6802
)	
<u>CLAIM NO. H-675987</u>)	DECISION AND ORDER

APPEARANCES:

Claimant, Dorsey A. Hursh, by
Prediletto, Halpin, Scharnikow & Bothwell, P.S., per
William L. Halpin, Attorney, and Debbie Sewell, Paralegal

Employer, Fruit Packers Supply, Inc., by
None

Department of Labor and Industries, by
The Attorney General, per
A. Craig McDonald, Assistant

This is an appeal filed by the claimant with the Department of Labor and Industries on July 25, 1990, which was forwarded to this Board on December 31, 1990, from a letter of the Department dated June 15, 1990 which stated that a portion of the claimant's pension benefits would be paid, for the benefit of his minor child, to the child's mother and guardian in whose custody the minor child resided. **AFFIRMED.**

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the Department of Labor and Industries to a Proposed Decision and Order issued on August 16, 1991 in which the determination of the Department dated June 15, 1990, was reversed and remanded to the Department with directions to pay the claimant the amount of pension benefits that it had deducted from the claimant's benefits, and to discontinue paying portions of said pension benefits to the custodian of the claimant's minor child.

The sole issue presented in this appeal is whether a portion of Mr. Hursh's pension benefits should be paid to the custodial parent of his minor child. Mr. Hursh's position is that he should receive the entire payment pursuant to RCW 51.32.090(2). This statute allows for any compensation paid for temporary total disability, which is awarded for a worker's minor children, is to be paid to the person actually providing support for that child pursuant to the order of a court of record providing for such support. Mr. Hursh asserts that since temporary total disability is the same in character as permanent total disability, except for the duration of the disability, this section should apply to his pension benefits.

1 This is the position adopted by the Industrial Appeals Judge in the Proposed Decision and Order. We
2 must disagree with this conclusion. We believe RCW 51.32.010 should apply in this situation.

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4 RCW 51.32.090(2) was enacted in 1957. Prior to that date, there was no question that RCW
5 51.32.010 applied to pension benefits. Anderson v. Dep't of Labor and Indus., 40 Wn.2d 210, 214-
6 215, 242 P.2d 514 (1952); In re Jacob Masseth, BIIA Dec., 7822 (1957). We again recognized
7 applicability of RCW 51.32.010 to pension benefits in 1974. In re Walter R. Brown, BIIA Dec. 47,766
8 (1974). The 1957 amendment specifically changed the law for temporary total disability only. It clearly
9 states: "Any compensation payable under this section ..." (Emphasis added). "This section" being the
10 section of the law specifically dealing with temporary total disability.

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12 It must be assumed that the Legislature knew all other compensation had previously been paid
13 pursuant to RCW 51.32.010, when children, not in the custody of the worker, were to receive a portion
14 of the worker's compensation. If the Legislature intended pension benefits to be affected, they would
15 have amended RCW 51.32.010 or 51.32.060. They chose not to do so. We see no reason to read
16 something into RCW 51.32.090(2) when it is unnecessary to do so. We agree with the Court in
17 Silkosky v. Brisebois, 49 Wn. App. 273, 277, 742 P.2d 193 (1987) when it stated:

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19 According to rules of statutory construction, when a statute specifically
20 designates the things or classes of things upon which it operates, an
21 inference arises in law that all things or classes of things omitted by the
22 legislature under the maxim expressio unius est exclusio alterius - specific
23 inclusions exclude implication.

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25 Washington Natural Gas Co. v. P.U.D. 1, 77 Wn.2d 94, 98, 459 P.2d 633 (1969).

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27 The Department has also raised some other issues as to the validity of the claimant's 1978
28 divorce decree. Based on our decision that RCW 51.32.010 applies in this case due to the plain
29 statutory language of RCW 51.32.010 and RCW 51.32.090(2), we see no need to discuss the other
30 issues raised in the Department's Petition for Review. Based on our decision we enter the following:

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38 **FINDINGS OF FACT**

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40 1. Dorsey A. Hursh injured his wrist, neck and back on April 2, 1980 while
41 employed by Fruit Packers Supply, Inc. On April 3, 1980, the claimant
42 submitted an application for benefits with the Department of Labor and
43 Industries. The Department accepted the claim, and on April 12, 1990, the
44 claimant was placed on the pension rolls as a totally and permanently
45 disabled worker, effective June 11, 1990.

1 On June 15, 1990, the Department issued a letter to the mother and
2 custodian of claimant's minor child, Michael Hursh, which enclosed a
3 payment due the child as his portion of pension benefits for the period of
4 June 11, 1990 to June 15, 1990, inclusive, and advised that the custodian
5 of the claimant's minor child would henceforth receive the amount of
6 \$ 41.44 per month, as his portion of the pension benefits
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8 On July 25, 1990, the claimant submitted a protest and request for
9 reconsideration from the Department letter of June 15, 1990 which was
10 treated by the Department as a direct appeal and forwarded to the Board
11 of Industrial Insurance Appeals on December 31, 1990. The Board
12 granted appeal on January 18, 1991, subject to proof of timeliness.

- 13 2. Dorsey A. Hursh receives total permanent disability benefits pursuant to a
14 Department order dated April 12, 1990, and affirmed by a Department
15 order dated June 13, 1990.
- 16 3. Dorsey A. Hursh is the father of Michael E. Hursh, a minor child, who
17 resides with his mother, Emily A. Hursh, separate from his father.
- 18 4. Emily A. Hursh has legal custody of Michael E. Hursh pursuant to a
19 Decree of Dissolution of Marriage entered by the Yakima County Superior
20 Court on January 27, 1978.
- 21 5. The Decree of Dissolution provided that Dorsey A. Hursh was not required
22 to provide child support for the benefit of Michael E. Hursh with Emily A.
23 Hursh acknowledging payment of the support by a receipt of the unequal
24 division of assets.

25 **CONCLUSIONS OF LAW**

- 26 1. The Notice of Appeal in this matter was timely filed.
- 27 2. The Board of Industrial Insurance Appeals has jurisdiction over the parties
28 and subject matter of this appeal.
- 29 3. RCW 51.32.010 is the applicable statute in determining who is to receive a
30 minor child's portion of a worker's permanent total disability pension
31 benefits.
- 32 4. Pursuant to RCW 51.32.010, Michael A. Hursh's portion of Dorsey A.
33 Hursh's pension benefits are properly payable to Emily Hursh, the legal
34 custodian of Michael A. Hursh.
- 35 5. RCW 51.32.090(2) only applies, by its plain terms, to temporary total
36 disability compensation, and therefore does not apply to the determination
37 of proper distribution of a worker's permanent total disability pension
38 benefits.
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1 6. The Department determination of June 15, 1990, which directed a portion
2 of the claimant's pension benefits to be paid to the legal custodian of the
3 claimant's minor child, in whose custody the child resides, is correct, and
4 is hereby affirmed.
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6 It is so ORDERED.

7 Dated this 18th day of November, 1991.
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9 BOARD OF INDUSTRIAL INSURANCE APPEALS

10
11 /s/
12 S. FREDERICK FELLER Chairperson
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14
15 /s/
16 FRANK E. FENNERTY, JR. Member
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19 /s/
20 PHILLIP T. BORK Member
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