

Snavely, Loren, Dec'd

BENEFICIARIES

Abandonment of spouse (RCW 51.08.020)

A worker was fatally injured in a logging accident. Although separated from the surviving spouse for three years, the worker provided occasional money for contributing to life necessities, had continued to visit on a regular basis, and had hoped to regain the marriage. Under these circumstances, the spouse was not living in a state of abandonment and had been provided with funds for maintenance as required by RCW 51.08.020.*In re Loren Snavely, Dec'd, BIIA Dec., 95 7778 (1997)*

BURDEN OF PROOF

Abandonment

When the Department rejects a claim for survivor's benefits on the grounds of abandonment, the Department has the burden of proving abandonment.*In re Loren Snavely, Dec'd, BIIA Dec., 95 7778 (1997)* Citing *Johnson v. Department of Labor & Indus.*, 3 Wn.2d 257 (1940).

Scroll down for order.

1 as intent, plan, motive or mental feeling. The testimony is therefore within an exception to the
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3 hearsay rule. ER 803(a)(3).
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5 Joan Amell testified that she witnessed Loren L. Snavelly giving money to Valarie Snavelly
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7 repeatedly during the Snavelly's separation. When asked about the context within which this
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9 occurred, Joan Amell recounted a time when Valarie Snavelly was living in Joan Amell's home during
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11 the Snavelly's separation. Joan Amell explained she had made clear that she could not support
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13 anyone other than her own family. Within this context, at 12/9/96 Tr. at page 35, lines 41-45, she
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15 testified she witnessed Valarie Snavelly asking Loren L. Snavelly for money for various purposes such
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17 as cigarettes, to help buy groceries, or to put towards anything that Joan Amell might need such as
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19 utilities and laundry soap. Our industrial appeals judge sustained the Department's hearsay objection
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21 to that portion of Joan Amell's testimony that described Valarie Snavelly's request.
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23 We reverse that ruling and overrule the objection. Under ER 801(d)(1)(ii), the testimony is not
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25 hearsay because it is consistent with the declarant Valarie Snavelly's testimony and is offered to rebut
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27 an express or implied charge against the declarant of recent fabrication or improper influence or
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29 motive. The Department later presented the testimony of its investigator, Britt Scott, and offered
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31 Exhibit No. 2, a statement signed by Valarie Snavelly. The purpose of Britt Scott's testimony, and of
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33 Exhibit No. 2, was to establish that Valarie Snavelly, contrary to her later testimony, had informed the
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35 investigator that she did not receive funds for maintenance from Loren L. Snavelly during their
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37 separation. Joan Amell's testimony, along with other testimony that Valarie Snavelly did receive funds
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39 for maintenance from Loren L. Snavelly, rebuts the implied charge that Valarie Snavelly recently
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41 fabricated her testimony. Joan Amell's testimony is also admissible as an exception to the hearsay
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43 rule under ER 803(a)(3), as a statement of the declarant's, Valarie Snavelly's, state of mind (such as
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45 intent, plan, motive or design) in receiving money from Loren L. Snavelly. It is likewise a statement of
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47 Loren L. Snavelly's state of mind in providing money.

1 We also remove from colloquy the testimony of Joan Amell and Valarie Snavelly at 1/8/97 Tr.
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3 at pages 37-43. Valarie Snavelly rested her case subject to possible presentation of rebuttal
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5 testimony, for which time was set aside. The requested rebuttal testimony on behalf of Valarie
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7 Snavelly was later denied by a substituted industrial appeals judge who had not had the opportunity to
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9 review the testimony given in Valarie Snavelly's case-in-chief. The further testimony is proper rebuttal
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11 to the testimony of the Department's investigator. Valarie Snavelly provided some testimony during
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13 her case-in-chief concerning her interaction with investigator Britt Scott. However, the relative entirety
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15 of his testimony could not have been reasonably anticipated. He did not make substantial notes or a
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17 recording of his interview of Valarie Snavelly. We further note our state Supreme Court has held the
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19 burden of proof to show abandonment lies with the Department in a case such as this. *Johnson v.*
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21 *Department of Labor & Indus.*, 3 Wn.2d 257, 259 (1940). Nevertheless, Valarie Snavelly presented
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23 the major portion of her case first in order. In these circumstances, she should have been allowed
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25 the requested rebuttal to the Department's evidence.

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27 The Board has reviewed the remaining evidentiary rulings in the record of proceedings and
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29 finds that no prejudicial error was committed. The rulings are affirmed.

30 31 **DECISION**

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33 Valarie J. Snavelly and the deceased worker, Loren L. Snavelly, were married, but separated,
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35 when Mr. Snavelly was fatally injured in a logging accident October 5, 1995. The issue presented by
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1 Valarie Snavely's appeal is whether she is a workers' compensation beneficiary under the following
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3 statutory provision:
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5 'Beneficiary' means a husband, wife, child, or dependent of a worker in
6 whom shall vest a right to receive payment under this title: *PROVIDED*,
7 That a husband or wife of an injured worker, living separate and apart in a
8 state of abandonment, regardless of the party responsible therefor, for
9 more than one year at the time of the injury or subsequently, shall not be
10 a beneficiary. A spouse who has lived separate and apart from the other
11 spouse for the period of two years and who has not, during that time,
12 received, or attempted by process of law to collect, funds for
13 maintenance, shall be deemed living in a state of abandonment.
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15 RCW 51.08.020.

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17 The Department determined that, at the time of Loren L. Snavely's fatal industrial accident, his
18 widow, Valarie Snavely, was living separate and apart in a state of abandonment within the meaning
19 of this statute. Valarie Snavely contends that, although she and Loren L. Snavely were separated,
20 she was not living in a state of abandonment within the meaning of the statute. We agree with
21 Valarie Snavely. We find that she is a beneficiary under the Workers' Compensation Act.
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27 The statute, RCW 51.08.020, deems that an individual was living in a state of abandonment if
28 "funds for maintenance" were not provided or sought by legal process during the two years of
29 separation preceding a worker's death. The statute also permits proof of "abandonment" by other
30 means. See, *Johnson*, at 258-259. Our judgment in such a case is necessarily strictly limited to
31 each unique set of facts. Also, the testimony in the case before us presents issues of witness
32 credibility. We, therefore, set forth the testimony of the three witnesses in considerable detail.
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39 Valarie Snavely was 35 years old and Loren L. Snavely was 19 years old when they married
40 December 7, 1989. They did not have any children. Although Valarie Snavely has children from a
41 prior marriage, none of her children lived with the Snavelys. Valarie Snavely testified that she and
42 Loren L. Snavely lived in Morton, Washington, after they were married. They next lived in Tacoma for
43 three or four months and then moved back to Morton. They separated in May or June of 1992. As
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1 reason for the separation, Valarie Snavelly explained, "[H]e had a girlfriend." 12/9/96 Tr. at 13. The
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3 Snavellys did not live together again after the separation. Neither filed for dissolution of their
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5 marriage.

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7 Valarie Snavelly continued to live in Morton following their separation. Loren L. Snavelly lived in
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9 neighboring Glenoma for two months and then moved back to Morton. Valarie Snavelly testified that
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11 Loren L. Snavelly also went to vocational school in Tacoma for about one year, and also that he
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13 would stay with other people for a while, and that he lived in a tent by a river for a couple of months.
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15 The vocational schooling was provided to Loren L. Snavelly under a prior workers' compensation
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17 claim that arose from a logging accident. According to Valarie Snavelly, Loren L. Snavelly was not
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19 working during their separation before or during vocational school in Tacoma. He did not begin work
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21 after graduating from vocational school until three weeks before he was fatally injured.

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23 Valarie Snavelly testified that, from the time they were separated to Loren L. Snavelly's death,
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25 Loren L. Snavelly came to visit: "Three or four times a month. Sometimes maybe more." 12/9/96 Tr.
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27 at 15. They visited and sometimes ate together. They continued a sexual relationship. "We would
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29 still be together as man and wife. We were friends and he talked to me." 12/9/96 Tr. at 15. Valarie
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31 Snavelly further testified:

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33 We got along. We were man and wife but we were also friends. If he
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35 needed somebody to talk to he could always talk to me because I was the
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37 one person that understood what was going on. He always came to me if
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39 his heart was sad or . . . He was a lost soul for a while. And if he needed
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41 to shower or something like that he was--he could always come to my
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43 house and do that if need be.

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45 12/9/96 Tr. at 15. In response to the question of whether she considered Loren L. Snavelly to have
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47 abandoned her, Valarie Snavelly testified: "No. . . . Because he didn't. We still had contact. We
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49 were still intimate." 12/9/96 Tr. at 17.

1 When questioned whether Loren L. Snavely financially supported her during their separation,

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3 Valarie Snavely testified:

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5 Yes. . . . He first he gave--he would give me cash and then he sent
6 money orders through Western Union and then when he would come to
7 the house to see me he would give me cash in-hand when he would
8 come to my home. . . . To pay bills, buy food. Things that I needed to
9 take care of.

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11 12/9/96 Tr. at 14. Loren L. Snavely sent the money orders while he was in school in Tacoma. Other
12 money was provided in cash. As far as Valarie Snavely knows, Loren L. Snavely did not have a
13 checking account. She stated that support continued "[a]bout three, maybe four months prior to his
14 death." 12/9/96 Tr. at 15.

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19 Valarie Snavely roomed at Joan Amell's house for an approximate seven-month period in
20 1992 and 1993 during the Snavelys' separation. Joan Amell knew Loren L. Snavely from the time he
21 was 12 or 13 years old. Loren L. Snavely was a friend of Joan Amell's children and stayed with her
22 at times "when things were not good at home for him." 12/9/96 Tr. at 31. Loren L. Snavely otherwise
23 lived with his aunt. Joan Amell characterized herself as a "surrogate mother in a way because he
24 would confide in me quite frequently." 12/9/96 Tr. at 33. Joan Amell has known Valarie Snavely
25 since Loren L. Snavely introduced Valarie Snavely as his wife, apparently soon after they were
26 married. She remained acquainted with them until Loren L. Snavely died.

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35 Joan Amell testified that, while Valarie Snavely was living with her, Loren L. Snavely would
36 come by "frequently and they would talk. Sometimes I would hear them arguing and sometimes they
37 just visited." 12/9/96 Tr. at 33. The Snavelys also visited Joan Amell during their separation at times
38 when Valarie Snavely was not living with Joan Amell. Joan Amell stated that Loren L. Snavely was at
39 her house with Valarie Snavely more than ten times when Joan Amell was present. Joan Amell
40 testified she tried to stay neutral during the Snavelys' separation. She is not aware of either of the
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1 Snavelys seeking to terminate their marriage. When asked if she knew why this was the case, she
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3 stated:

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5 Well, I am not sure on Valarie's part, but I had talked to Loren a time or
6 two and his concept was that he thought that they would regain their
7 marriage eventually, was his feelings, as far as he communicated to me.
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9 12/9/96 Tr. at 33. Joan Amell holds an opinion that Loren L. Snavely did not abandon Valarie
10 Snavely, "[b]ecause I had personally seen them together and knew that he sought her out on a
11 regular basis." 12/9/96 Tr. at 37.
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15 Joan Amell testified that she was present when Loren L. Snavely gave Valarie Snavely money:

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17 Sometimes a couple of times a month. Sometimes every other month.
18 Sometimes it would be two times in a month. Sometimes two or three
19 months in between, that I knew of.
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21 12/9/96 Tr. at 35. She later indicated she doubted that more than a month passed between times
22 when Loren L. Snavely would provide Valarie Snavely money while Valarie Snavely was staying at
23 her house. When asked about the context within which the money was provided, Joan Amell
24 explained:
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29 [E]specially when she was staying with me . . . I was not in the position to
30 support anybody other than my own family. And so she would ask him for
31 money for cigarettes or to help buy groceries or to put towards anything
32 that I might need as far as utilities and laundry soap and this kind of thing.
33 Because I was quite adamant about not supplying everything for
34 everybody.
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36 12/9/96 Tr. at 35. Joan Amell further testified that Valarie Snavely gave her money received from
37 Loren L. Snavely "on a regular and on a conscientious basis." 12/9/96 Tr. at 38. She also took
38 Valarie Snavely to the grocery store in Morton several times to pick up money orders from Loren L.
39 Snavely.
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44 The Department's case rests upon the admitted three-year separation, its investigator Britt
45 Scott's testimony, and Exhibit No. 2. Exhibit No. 2 is a brief statement, handwritten by Britt Scott
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1 reportedly during his interview of Valarie Snavely. Valarie Snavely signed the document. The
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3 document is dated October 19, 1995. The relevant portion is,

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5 During their separation (sic) Valarie has stated that Laren (sic) did not
6 provide any means of support. She received no [letter "t" crossed out and
7 initialed] income or had any bills paid by Loren.

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9 Valarie stated she did not attempt thru (sic) legal services to obtain any
10 support from Loren during their separation (sic).

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12 Exhibit No. 2. Britt Scott testified that he prepared the document for Valarie Snavely's signature
13 based upon her reply to his questions.

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16 Britt Scott testified he met with Valarie Snavely in a restaurant in Morton on approximately
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18 October 17, 1995, for the purpose of gathering facts relevant to Valarie Snavely's eligibility as a
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20 beneficiary. He testified that he, Valarie Snavely, and her mother were present. He did not recognize
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22 Joan Amell's name. When questioned specifically regarding his questions, Britt Scott indicated:

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24 I asked Ms. Snavely if the deceased had ever provided any means of
25 support. I explained that to be in any electrical bills, rent, food, any type
26 of money that she was receiving by the deceased to show that he was in
27 some way supporting her.

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29 . . .

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31 Basically, I--the realm of my question was specifically support that the
32 Department would consider support. And that would be money to live on
33 for food, gas, like I said, any utility bills, rent, things of that nature. I did
34 not ask, you know, had he ever given you 20 bucks just to give you \$20. I
35 did not go into that specific of details, no.

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37 1/8/97 Tr. at 12. He stated that he read the statement in Exhibit No. 2 to Valarie Snavely and gave
38 her an opportunity to correct the statement prior to her signing the document. He also testified that
39 he did not witness any crying or what he considered to be grieving by Valarie Snavely. He testified
40 they discussed the nature of the Snavelys' relationship "[t]o a degree" and he gained the impression
41 from their conversation that she suffered some abuse and "they did not get along." 1/8/97 Tr. at 13-
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47 14.

1 Upon cross-examination, Britt Scott indicated that he met with Valarie Snavelly approximately
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3 30 to 45 minutes, that he did not have a tape recorder with him during the meeting, and his notes are
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5 essentially limited to the contents of Exhibit No. 2. He did not ask Valarie Snavelly whether she and
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7 Loren L. Snavelly regularly spent time together up to the time of Loren L. Snavelly's death. "Other
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9 than he'd abused her there was no real in-depth conversation about what type of relationship they
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11 had" 1/8/97 Tr. at 24. When asked whether Valarie Snavelly, contrary to her testimony at
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13 hearings, had denied to Britt Scott that she received money and cigarettes from her husband
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15 periodically up until the time of his death, and that she would use the money to pay for bills and for
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17 food, Britt Scott responded:

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19 Yes, she did deny that. She did not--I would say not to that specific
20 answer, but she denied receiving any type of money to pay any types of
21 bills or food, i.e., by the deceased.

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23 1/8/97 Tr. at 20.

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25 When asked if Valarie Snavelly told him that she did not receive any money from
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27 Loren L. Snavelly during their separation, Britt Scott responded: "That's exactly what I'm telling you."
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29 1/8/97 Tr. at 21. When asked if he explained that support included receiving "cash," Britt Scott
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31 testified that he explained what the Department meant by support: "I indicated if she'd received any
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33 monies to pay bills, for food, rent, utilities. And I did use the word monies." 1/8/97 Tr. at 22. When
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35 asked further, he then answered "[y]es" that he did specifically talk to her about receiving "cash,"
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37 explaining: "That's exactly what I'm referring to is there was no monies, otherwise you'd have no
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39 support." 1/8/97 Tr. at 22. Again, referring to how he derived the response related in Exhibit No. 2,
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41 Britt Scott stated his question was whether Valarie Snavelly received "[s]upport." 1/8/97 Tr. 28.

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43 Upon redirect examination, Britt Scott stated that he explained what support and income
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45 meant and that, "I used the word money." 1/8/97 Tr. at 29. He testified that Valarie Snavelly did not
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47 indicate she was unclear about what he meant during the interaction. He testified that he did not

1 make any notes concerning what specific questions he asked Valarie Snavely, but he normally asks
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3 the same questions in like situations.
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1 On cross-examination during her case-in-chief, Valarie Snavely stated she remembered the
2 interaction with Britt Scott "vaguely," and "I couldn't tell you everything we discussed." 12/9/96 Tr. at
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4 20. She remembered signing a statement, but did not remember telling Britt Scott that she received
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6 no income, nor had bills paid by Loren L. Snavely. When questioned about Exhibit No. 2, she stated
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8 "that would be kind of stupid for me to even make some kind of comment like that when I have
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10 verification from Western Union that he did provide for me." 12/9/96 Tr. at 21-22. She further
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12 explained:
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15 I remember some of the conversation with the man from L&I. I was not
16 in--my husband had just been killed, among other things, and I don't--I
17 could not even recall the conversation that we had. Not to mention we
18 are in the middle of a restaurant with all kinds of people trying to talk to
19 everybody and--.

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21 12/9/96 Tr. at 22-23.
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23 Upon redirect examination, Valarie Snavely indicated she remembers speaking with a person
24 from the Department, but does not remember the person specifically. She explained that she thinks
25 Joan Amell had handled the phone call setting the appointment because she did not have a phone,
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27 and "like I said, my husband had just been killed. I was upset, among other things, and she kind of
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29 was trying to help me through a sad time." 12/9/96 Tr. at 24.
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33 When asked why she would have signed a statement saying Loren L. Snavely did not provide
34 her any means of support, she responded:
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37 The way I took it when he had said something to me was like a paycheck
38 or, you know, a large sum of money weekly or out of every paycheck like
39 a support. In fact, I think that is how he did bring it to me is like a support
40 check. Like a child support check or something like that. Because like I
41 had said earlier, it would be silly for me to make a comment like that when
42 I have statements from Western Union that Loren did send me money
43 and he did give me cash. But times like that you don't think to write it
44 down because you don't think that tomorrow your husband or maybe your
45 wife is going to be dead.
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47 12/9/96 Tr. at 25.

1 When questioned what she understood to be "income" when signing the statement, she
2 explained, "[L]ike a support payment." 12/9/96 Tr. at 26. Asked if this were different from "cash," she
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4 stated:
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7 To me it is because to me a support payment, you would be going to
8 court in front of a judge to get support from your spouse, like a child
9 support payment. That is the only way I know how to explain it. And
10 Loren was sending me money, giving me money and helping me as much
11 as he could. And he was helping me. We were getting along and I saw
12 no need to take him to court. I hadn't filed for divorce. We were not
13 legally separated or any of that.
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15 12/9/96 Tr. at 26.
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17 During Valarie Snavelly's rebuttal case, Joan Amell stated she was present during Britt Scott's
18 interview. She stated the interview lasted 10 to 15 minutes. Ms. Amell stated she recalled Valarie
19 Snavelly telling Britt Scott that she received cash, money orders, and cigarettes from
20 Loren L. Snavelly. "He asked her if she had any receipts. She said no. He basically told her that it
21 basically wasn't important." 1/8/97 Tr. at 38.
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27 On rebuttal, Valarie Snavelly also stated the interview lasted 10 or 15 minutes and:
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29 I told the investigator that I did receive cash and that Loren helped me,
30 but I did not have written proof of the money transaction except for my
31 statement from Western Union; that was the only solid proof that I had
32 that I did receive money from Loren.
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34 1/8/97 Tr. at 41-42.
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36 Asked about the investigator's response, Valarie Snavelly stated:
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38 That I needed proof of transaction of money and I didn't have any. I didn't
39 have paperwork from Western Union, so it didn't really matter. He
40 needed proof.
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42 1/8/97 Tr. at 42.
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44 As in *Johnson*, the Department and the industrial appeals judge in the Proposed Decision and
45 Order focus their attention upon the statutorily-posed question of whether Valarie Snavelly received
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1 funds for maintenance during the two-year period of the Snavelys' separation prior to
2 Loren L. Snavely's death. The Department has not otherwise, at least explicitly, attempted to show
3 that Valarie Snavely was living in a state of abandonment. Lest there be any doubt on the later issue,
4 we readily find that Valarie Snavely was not living in a state of abandonment unless it is legally
5 deemed to be the case solely because she did not receive funds for maintenance during the two-year
6 period prior to Loren L. Snavely's death. The language of the statute, RCW 51.08.020, distinguishes
7 between "living separate and apart" and "abandonment." Living separately does not establish
8 abandonment. The unrefuted evidence presented by Valarie Snavely establishes that, although
9 separated: she did not consider herself abandoned; she and Loren L. Snavely continued a socially
10 and physically intimate relationship; neither had sought to legally terminate their marriage; and, at
11 least Loren L. Snavely had expressed his hope of continuing their marriage. The record before us
12 does not provide any basis to infer other than that this was the condition of their relationship
13 throughout their separation.
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27 We turn then to the issue of whether Loren L. Snavely provided Valarie Snavely "funds for
28 maintenance" within two years prior to his death. The industrial appeals judge placed considerable
29 emphasis upon the fact that payments "were irregular and in uncertain and undetermined amounts."
30 Proposed Decision and Order at page 4. See also Proposed Decision and Order, Finding of Fact No.
31 5. We do not find any requirement in RCW 51.08.020 that funds be provided with particular regularity
32 or in certain amounts in order to be considered as "funds for maintenance." Neither do we find such
33 particular requirements in the prior and present statutes that we have reviewed concerning provision
34 of maintenance in the context of legal separation or dissolution of marriage, such as RCW 26.09.090,
35 nor in the cases interpreting these statutes. We do, of course, agree that whether the funds are
36 provided "for maintenance" is a materially relevant issue. Evidence of regularity or certainty of
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1 amount in some cases might provide indirect evidence of the purpose of the funds; but we perceive
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3 no basis upon which to make regularity and certainty of amount legally determinative.
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5 If Valarie Snavelly and Joan Amell are believed in the present case, then it is clear that
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7 Loren L. Snavelly provided funds for maintenance. Both Valarie Snavelly and Joan Amell testified that
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9 Valarie Snavelly's living expenses, such as utility bills and money for food, were a primary motivating
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11 factor in requests made to Loren L. Snavelly, as well as in his providing the money, and in the use to
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13 which Valarie Snavelly put the money. There is no evidence to the contrary on this particular point.
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15 Likewise, if these two witnesses are believed, the evidence establishes that Loren L. Snavelly
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17 engaged in a pattern of providing funds for maintenance, albeit not entirely regular, which lasted at
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19 least up to three months before his death. Again, there is no evidence to the contrary on this point.
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21 Our determination in this case must then ultimately turn on whether we are convinced by the
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23 preponderance of the evidence that Valarie Snavelly received the funds from Loren L. Snavelly as she
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25 and Joan Amell testified, or whether we are convinced of the opposite by the testimony of Britt Scott
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27 and by Exhibit No. 2. We only summarize here our reasons for our determination that Loren L.
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29 Snavelly provided Valarie Snavelly funds for maintenance. It is neither possible nor practical to
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31 articulate all of the reasons why each of us reach this conclusion.
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33 From this record it appears unlikely to us that any of the three witnesses truly recall Britt Scott's
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35 interview of Valarie Snavelly in as much exact detail as was eventually stated in each of their
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37 respective testimonies. First, the interview occurred well over one year before their testimony.
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39 Second, Valarie Snavelly and Joan Amell ultimately professed recall of more detail of the interview
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41 than their earliest testimony would seem to suggest. During her case-in-chief, Valarie Snavelly
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43 indicated she had only a vague recollection of the interview. Valarie Snavelly and Joan Amell each
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45 only professed to recall more detail during Valarie Snavelly's rebuttal case. Britt Scott did not take
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47 notes any more detailed than what is contained in Exhibit No. 2, nor did he have a list of any of the

1 questions that he asked during the interview. He now professes greater certainty than his notes and
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3 Exhibit No. 2 would appear to support on the matter of whether he actually explored the details of all
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5 money Valarie Snavely may have received from Loren L. Snavely. Third, the witnesses are adamant
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7 in stating polar opposite details about the interview. These three factors suggest that none of the
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9 witnesses were able to actually recall the interview in detail objectively. These factors also suggest
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11 that it is possible some of the details they provided were unwittingly influenced by the conviction with
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13 which each held his or her conclusions as to whether Loren L. Snavely provided money to Valarie
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15 Snavely to help with life necessities.

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17 While we note the limitations in the accuracy of each of the witnesses, we are ultimately
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19 convinced by the testimony of both Valarie Snavely and Joan Amell on the actual issue of whether
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21 Loren L. Snavely provided Valarie Snavely money, in the form of money orders and cash, to assist
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23 with utilities, food, and the like. While not so detailed as to strain credulity, the details that were
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25 recalled are of the kind that one would reasonably expect a witness to remember, such as: Joan
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27 Amell taking Valarie Snavely to the store to pick up money orders; the circumstances of Valarie
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29 Snavely living in Joan Amell's home with the expectation conveyed to her and Loren L. Snavely that
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31 she contribute financially; and, the recollection of Loren L. Snavely actually giving cash to Valarie
32
33 Snavely. Moreover, this testimony is consistent with the whole of the testimony characterizing Loren
34
35 and Valarie Snavely's relationship while separated. Her statement that she believed Loren L.
36
37 Snavely provided as much as he could and her characterization of the degree of regularity are
38
39 consistent with the rest of her testimony.

40
41 Thus, we do not view Exhibit No. 2 and Britt Scott's testimony sufficient to impeach the
42
43 credibility of Valarie Snavely and Joan Amell. The terms used in the document are too conclusory to
44
45 directly rebut the testimony of Valarie Snavely and Joan Amell as to what, in fact, transpired
46
47 financially between Valarie and Loren L. Snavely during their separation. Valarie Snavely signed the

1 document in strained circumstances soon after her husband's death, after a brief interview in a public
2 restaurant, and without legal advice. We accept Valarie Snaveley's view that, when signing the
3 document in Exhibit No. 2, she must have believed a more formal meaning (such as larger sums, a
4 check, or court-ordered payment) was conveyed by "means of support,, "income" or "had any bills
5 paid." The statement immediately following, that she did not attempt through "legal services to obtain
6 any support," could well have contributed to such misunderstanding. Exhibit No. 2.
7
8

9 We have considered the Proposed Decision and Order and Valarie Snaveley's Petition for
10 Review. Based upon a thorough review of the record before us, we make the following Findings of
11 Fact and Conclusions of Law.
12

13 **FINDINGS OF FACT**

- 14 1. On October 17, 1995, the Department of Labor and Industries received
15 an application for benefits alleging Loren L. Snaveley sustained a fatal
16 injury during the course of his employment with Leisure Time Loggers,
17 Inc., on October 5, 1995. The Department allowed the claim for benefits
18 as for a single worker. On November 6, 1995, Valarie Snaveley filed an
19 application for benefits with the Department, alleging she was Loren L.
20 Snaveley's spouse at the time of the fatal accident. On November 7, 1995,
21 the Department issued an order that denied Valarie Snaveley's application
22 on grounds that she did not meet the definition of "beneficiary" as defined
23 under RCW 51.08.020. On November 20, 1995, Valarie Snaveley filed a
24 protest and request for reconsideration of the November 7, 1995 order
25 with the Department. On December 12, 1995, the Department issued an
26 order that affirmed the order dated November 7, 1995. On December 22,
27 1995, Valarie Snaveley filed a Notice of Appeal of the December 12, 1995
28 order with the Board of Industrial Insurance Appeals. She filed an
29 amended appeal on January 17, 1996. The Board assigned the appeal
30 Docket No. 95 7778, and on January 17, 1996, the Board granted the
31 appeal and directed that proceedings be held.
32
- 33 2. Valarie Snaveley and Loren L. Snaveley were married on December 9,
34 1989. They separated in May or June of 1992. They continued living
35 separately until Loren L. Snaveley's death on October 5, 1995. Neither
36 filed for legal divorce or legal separation. Neither sought court-ordered
37 maintenance.
38
- 39 3. Loren L. Snaveley died in a fatal accident in the course of covered
40 employment with Leisure Time Loggers, Inc., on October 5, 1995.
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- 1 4. During their separation from May or June of 1992 to Loren L. Snaveley's
2 death, Loren L. Snaveley and Valarie Snaveley established and maintained
3 a social relationship consisting of visiting with each other on a regular
4 basis, eating together occasionally, having sexual relations, and intimate
5 conversations. Loren L. Snaveley expressed his hope to a close
6 acquaintance, Joan Amell, that he and Valarie Snaveley would regain a
7 marriage together. Valarie Snaveley did not, in her personal opinion,
8 consider herself abandoned by Loren L. Snaveley.
9
- 10 5. During their separation and until at least three months before his death,
11 Loren L. Snaveley established a pattern of providing sums of money in
12 cash (except for money orders for a period) to Valarie Snaveley for the
13 purpose of contributing to her life necessities such as utilities and food.
14 The provision of money for this purpose varied in regularity from between
15 two times each month to every two or three months. Valarie Snaveley
16 used these funds to help her with living expenses.
17
- 18 6. At the time of Loren L. Snaveley's death on October 5, 1995,
19 Loren L. Snaveley and Valarie Snaveley were married but living separately.
20 Valarie Snaveley was not living in a state of abandonment by
21 Loren L. Snaveley. Loren L. Snaveley provided Valarie Snaveley funds for
22 maintenance within the two-year period preceding his death.
23

CONCLUSIONS OF LAW

- 24
- 25
- 26 1. The Board of Industrial Insurance Appeals has jurisdiction over the
27 parties and the subject matter of this appeal.
28
- 29 2. Within the meaning of RCW 51.08.020, Valarie Snaveley is a beneficiary
30 because: at the time of Loren L. Snaveley's death due to an industrial
31 injury of October 5, 1995, Valarie Snaveley was Loren L. Snaveley's
32 spouse; she was not "living separate and apart in a state of
33 abandonment"; and, she is not "deemed" to have been living in a state of
34 abandonment by operation of law.
35
- 36 3. The order of the Department of Labor and Industries dated
37 December 12, 1995, that affirmed an order dated November 7, 1995, that
38 denied pension benefits to Valarie Snaveley on grounds she does not
39 meet the definition of a beneficiary under RCW 51.08.020, is incorrect
40 and is reversed. The matter is remanded to the Department with
41 directions to
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1 issue an order that determines Valarie Snavelly is a beneficiary and to
2 provide her benefits accordingly.

3
4 It is so ORDERED.

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6 Dated this 28th day of August, 1997.

7
8 BOARD OF INDUSTRIAL INSURANCE APPEALS

9
10
11 /s/ _____
12 S. FREDERICK FELLER Chairperson

13
14
15 /s/ _____
16 FRANK E. FENNERTY, JR. Member