

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

MARTIN ANTUNEZ RENDON (Deceased), *Applicant*

vs.

**OAK SPRINGS NURSERY, INC.; OAK RIVER INSURANCE COMPANY,
administered by BHHC, *Defendants***

**Adjudication Number: ADJ16925192
Van Nuys District Office**

**OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND
DECISION AFTER RECONSIDERATION**

Applicant Rosa Gutierrez, guardian ad litem for Melanie Rendon, seeks reconsideration of the Findings of Fact issued on February 13, 2024, wherein the workers' compensation administrative law judge (WCJ) found as relevant that (1) while employed as a tree cutter on October 28, 2022, applicant Martin Rendon (deceased) sustained injuries arising out of and in the course of employment resulting in death, with defendant issuing death benefits in the amount of \$272.90 a week to Brayan Antunez-Cabrera from October 28, 2022 to August 2, 2023, and ongoing; \$272.90 a week to Melanie Rendon, from October 28, 2022 to August 2, 2023, and ongoing; (2) Melanie Rendon is not a total dependent of Martin Antunez Rendon (deceased) under Labor Code section 3501(a); (3) Melanie Rendon is a partial dependent of Martin Antunez Rendon (deceased); (4) the evidence fails to substantiate partial dependency; (4) Melanie Rendon is not entitled to death benefits under Labor Code section 4703.5(a); and (6) all other issues are moot.

Applicant contends that the WCJ erroneously failed to find that Melanie Rendon is a total dependent of Martin Rendon (deceased) because he was legally liable for her maintenance at the time of injury. In the alternative, applicant contends that (1) the evidence substantiates Melanie Rendon's partial dependency; and (2) the record supports reassignment of the death benefit pursuant to Labor Code section 4704.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based upon our review of the record, we will grant the Petition, and as our Decision After Reconsideration, we will rescind the Findings of Fact and substitute findings that Melanie Rendon

is a total dependent of Martin Rendon (deceased), defer the issue of whether Melanie Rendon is entitled to death benefits under Labor Code section 4703.5(a), and defer all other issues; and we will return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On December 12, 2023, the matter proceeded to trial with applicant Rosa Gutierrez, guardian ad litem for Melanie Rendon, as the sole witness. (Minutes of Hearing and Summary of Evidence, December 12, 2023, p. 1.)

In the Report, the WCJ states:

The parties stipulated that:

Death benefit in the amount of \$272.90 a week to Brayan Antunez-Cabrera, from October 28, 2022, to August 2, 2023, and ongoing.

Death benefit in the amount of \$272.90 paid to Melanie Antunez, starting October 28, 2022, through August 2, 2023, and ongoing.

Grisel Antunez Cabrera, born April 7, 2002, is the daughter of Martin Antunez Rendon. Melanie Antunez, born March 4, 2022, is the daughter of Martin Antunez Rendon. Brayan Antunez Cabrera is a total dependent.

...

The issues at trial included:

1. Is Melanie Antunez Rendon a total dependent, pursuant to Labor Code Section, 3501(a)?
2. Is Melanie Antunez Rendon entitled to the minor's benefit regarding dependency claim, pursuant to Labor Code Section 4703.5(a)?
3. Whether COLA would apply to death benefits citing panel decision Mierczynski and En bane Phillips, which will be deferred.

...

TESTIMONY OF MS. GUTIERREZ

Ms. Gutierrez testified she is the mother of Melanie Antunez Rendon, and that the father is Martin Antunez Rendon. . . . When Melanie was born, Ms. Gutierrez and Melanie were living at Ms. Gutierrez's father's house with her brother, Martin, and her uncle. The address is 10860 Sutter Avenue, Pacoima, 91331. (Exhibit 3). Melanie qualifies as a dependent under LC 3503.

When Martin passed away on October 28, 2022, Ms. Gutierrez was 26 years old. When asked what their personal relationship was when Martin passed away, she stated they were co-parenting. Melanie, and that he always told her that he would help with her support and visit Melanie whenever he could, as well as give her money for shopping.

When Ms. Gutierrez was asked when the last time she lived with Martin, she believes it was the end of 2021. She stated that he left a lot of his clothes, which he took little by little as time went by. (Mr. Atunez' death occurred on October 28, 2022.)

Ms. Gutierrez stated that Martin paid rent to her father whose house they lived in, and said it was \$600.00 a month. Mr. Gutierrez stated that they had no court order for support. (Minutes of Hearing and Summary of Evidence, p 5).

Thus, under the standard interpretation of Labor Code 3501, Melanie neither lived with Mr. Atunez nor was there a support order for her maintenance at the time of his injury.

...

Ms. Gutierrez further testified When the witness was asked about Martin's relationship with Melanie a year prior to his death, she said that he would visit her all the time, but mostly on weekends. When the witness was asked about her financial situation one year prior to Martin's death, she stated that he gave her money, and bought groceries and clothes, specifically for Melanie (Ibid, p. 5).

When asked to estimate how much Martin provided her per week, she stated \$100 to \$200, \$200 if he worked a Saturday. He would pay her in cash. She stated that she used the money to go to the store, buy diapers, shampoo, clothes, household goods, and groceries, but Martin would usually pay for these when they would get together on the weekends and go shopping.

Ms. Gutierrez stated that Martin paid rent to her father whose house they lived in, and said it was \$600.00 a month. When Ms. Gutierrez was asked if Martin, Melanie, and herself would ever go out to eat, she said, yes, approximately three times a week. She reiterated that he would pay for groceries and pay for diapers. She stated that he would buy two packs of diapers at a time every month, which cost approximately \$40.00 each. He also bought clothing for Melanie. Usually, he would buy two to three changes of clothing at a time, which would cost approximately \$8.00 to \$12.00 each. He would continue to buy clothes for Melanie because she was getting bigger.

...

If Melanie became ill, Martin would come with Melanie and Ms. Gutierrez to the hospital and buy the medicines, such as Tylenol or Pedialyte. Martin also bought Melanie a bed mattress. Ms. Gutierrez stated that her only other source of income, besides money from Martin, was from working at Ross. She received food stamps, which came to approximately \$26.00 a month. When asked about her 2021 and 2022 W-2 statements from Ross Dress for Less, she stated the 2021 W-2 was about \$22,000 for the year, and the year 2022 was approximately \$25,000.

Ms. Guitierrez made \$16,754.69 pursuant to her 2021 W-2. (Exhibit 1). When Ms. Gutierrez was asked if she could maintain her standard of living without Martin's contributions, she stated, No. (Id. p. 6).

When asked, in detail, what the financial support for Martin was, she stated, they would go to Target in the prior year before his death, and he would purchase clothes for Melanie. He would also purchase toys, household goods, onesies and sheets, At the grocery store, he'd buy paper towels and garbage bags. At Ross, they would buy towels, blankets, comforters, and sheets because Ms. Gutierrez would get a discount. When shopping for groceries, the typical supermarket trip would include tortillas, milk, eggs, fruit, vegetables, little snacks for Melanie, pasta, and potatoes. (Id. p. 7).

...

TOTAL DEPENDENT

Pursuant to the discussion above, Melanie Antunez Rendon is not a total dependent.

Is Melanie Antunez Rendon entitled to the minor's benefit regarding dependency claim, pursuant to Labor Code Section 4703.5(a)?

...

By its terms, LC 4703.5 benefits are available only to "totally dependent children, as defined in Section 3501." So, it would not be available to a partially dependent minor child. The "totally dependent children" entitled to the benefit are then "defined in Section 3501."

Melanie Antunez Rendon is not entitled to the minor's benefit regarding dependency claim, pursuant to Labor Code Section 4703.5(a).

PARTIAL DEPENDENT

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Melanie Antunez Rendon is found to be a partial dependent.

If there was one total dependent, that person will still receive the full \$250,000, while the partial dependents will receive four times the amount of their annual support up to a total of \$290,000. When there are multiple partial dependents, the total benefit will be divided between them in proportion to the extent of their dependency on the deceased employee. The parties stipulated that Brayan Antunez Cabrera is a total dependent.

Ms. Guitierrez made clear in her testimony that Mr. Antunez paid some monies for the support of his daughter, Melanie Antunez, however, in order to substantiate partial dependency, the death benefit claimant must prove the actual dollar amount annually devoted by the dependent to his or her support. (See *Chevron U.S.A., Inc. v. WCAB (Steele)* (1999) 64 CCC 1, 13.)

Ms. Guitierrez' testimony was unable to sustain this burden.
(Report, pp. 1-9.)

DISCUSSION

Labor Code section 3501(a) provides:

A child under the age of 18 years, or a child of any age found by any trier of fact, whether contractual, administrative, regulatory, or judicial, to be physically or mentally incapacitated from earning, shall be conclusively presumed to be wholly dependent for support upon a deceased employee-parent with whom that child is living at the time of injury resulting in death of the parent or for whose maintenance the parent was legally liable at the time of injury resulting in death of the parent. (§ 3501(a) [Emphasis added].)

In *Smith v. Workmen's Compensation Appeals Board* (1966) 245 Cal.App.2d 292 [31 Cal.Comp.Cases 307], the court held that a deceased mother was legally liable for the maintenance of her minor children within the meaning of Labor Code section 3501 even though she lacked custody of the children and had not been ordered by a court to provide them support. The court reasoned:

Evidence establishing facts to which the conclusive presumption of total dependency attaches as a matter of law need not show actual dependency, either total or partial, as a matter of fact. (citations omitted) . . . [A]n award of compensation under the statute on account of the death of an employee is made to a child as a total dependent when the facts giving rise to the presumption exist, regardless of actual dependency. A review of the sufficiency of the evidence to support a finding of total dependency based upon the presumption is restricted to a consideration of the sufficiency of the evidence to support a finding of facts giving rise to the presumption. Thus, granted the existence of such facts, application of the presumption is not precluded by a showing the child actually did not receive any support from the deceased parent (citation omitted); received only a portion of his required support from that parent (citation omitted); was not entitled to receive any support from the deceased parent (citation omitted); received partial support from the surviving parent (citations omitted); was supported entirely by the surviving parent or another (citation omitted); was legally dependent for his entire support upon the surviving parent or another (citations omitted); or partially supported himself (citation omitted).

. . .
In the case at bench, the evidence supports the conclusion that the secondary duty of the mother to support her children was activated by their need for support in addition to that which their father was able to provide to maintain them in the mode of living to which they were accustomed; their mother was able to provide that additional support; and by virtue of these circumstances the mother was legally liable for the support of her children at the time of injury causing death.

No doubt about the mother's legal liability would exist if, in the custody proceedings, pursuant to the provisions of Civil Code, sections 139 and 196, the court had ordered her to pay a designated amount toward the support of her children. The fact she honored her legal obligation voluntarily, rather than requiring its enforcement by court order, does not contradict its existence. (citations omitted)

Similarly, the fact the father of the children was contributing to their support and the legal liability of the mother was for partial rather than total support, does not foreclose application of the total dependency presumption. (citation omitted)

...

It is of no concern to a determination of the issue in this case whether the legal liability of the mother was predicated upon her specific duty to support prescribed by Civil Code, section 196; her general secondary duty under other statutes, the enforcement of which is authorized by Civil Code, section 137.1; or her additional duty under the Uniform Civil Liability for Support Act, which, by the terms thereof, is subject to the provisions of Civil Code, section 196. In either event, an enforceable obligation to support existed at the time of injury resulting in death and this fact authorized application of the total dependency presumption.

(*Smith, supra*, at pp. 295-300.)

Here, applicant Rosa Gutierrez, guardian ad litem for Melanie Rendon, testified that in the year prior to his death, Mr. Rendon would visit Melanie at her home, give her between \$100.00 and \$200.00 per week, buy groceries, clothes, diapers and household goods, and that he had paid rent of \$600.00 per month for her benefit. (Report, pp. 4-5.) She further testified that his contributions enabled her to maintain her standard of living. (*Id.*, p. 5.)

This uncontroverted testimony establishes that Mr. Rendon provided additional support for Melanie Rendon—and that he had an enforceable obligation to support her at the time of injury. (See Minutes of Hearing and Summary of Evidence, December 12, 2023, p. 1; *Id.*) We therefore conclude that Mr. Rendon was legally liable for her support at the time of injury causing death under Labor Code section 3501(a). Accordingly, we will substitute a finding that Melanie Rendon is a total dependent of Martin Rendon (deceased).

As required by Labor Code section 5313 and explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Bd. en banc) (*Hamilton*), "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision" and enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision." (*Hamilton, supra*, at pp. 475-476.) A decision must be based on admitted evidence in the record and supported by substantial evidence. (*Hamilton, supra*, at p. 478; Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [113 Cal.

Rptr. 162, 520 P.2d 978, 39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500].) Labor Code section 5313 thus requires the WCJ to "file finding upon all facts involved in the controversy" and to issue a corresponding award, order or decision that states the "reasons or grounds upon which the [court's] determination was made." (See also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621–622 (Appeals Board en banc).)

In this regard, the record shows that the WCJ determined that Melanie Rendon is not entitled to Labor Code section 4703.5(a) death benefits based solely upon the finding that she was not a total dependent of Mr. Rendon and is otherwise undeveloped as to that issue. (Report, p. 7.) But since we have determined that Melanie Rendon was a total dependent, the record is without grounds to support the finding that she is not entitled to Labor Code section 4703.5(a) death benefits. Accordingly, we will substitute a finding that defers the issue of whether Melanie Rendon is entitled to Labor Code 4703.5(a) death benefits.

Lastly, since we have determined that Melanie Rendon was a total dependent, we conclude that her alternative contentions that the evidence substantiates her partial dependency and supports reassignment of the death benefit pursuant to Labor Code section 4704 are moot.

Accordingly, will grant the Petition, and as our Decision After Reconsideration, we will rescind the Findings of Fact and substitute findings that Melanie Rendon is a total dependent of Martin Rendon (deceased), defer the issue of whether Melanie Rendon is entitled to death benefits under Labor Code section 4703.5(a), and defer all other issues; and we will return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact issued on February 13, 2024 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact issued on February 13, 2024 is **RESCINDED AND SUBSTITUTED** as set forth below.

FINDINGS OF FACT

1. Applicant MARTIN ANTUNEZ RENDON (deceased), born _____, while employed on October 28, 2022, as a tree cutter, at Sylmar, California, by Oaks Springs Nursery, Inc., sustained injuries arising out of and in the course of employment to his death. At the time of injury, the employer's workers' compensation carrier was Oak River Insurance Company, administered by BHHC. At the time of injury, the employee's earnings were

\$818.70 per week, warranting indemnity rates of \$545.80 for temporary disability. The carrier/employer has paid compensation as follows: Death benefit in the amount of \$272.90 a week to Brayan Antunez-Cabrera, from October 28, 2022, to August 2, 2023, and ongoing. Death benefit in the amount of \$272.90 paid to Melanie Antunez, starting October 28, 2022, through August 2, 2023, and ongoing. Grisel Antunez Cabrera, born _____, is the daughter of Martin Antunez Rendon. Melanie Antunez, born _____, is the daughter of Martin Antunez Rendon. Brayan Antunez Cabrera is a total dependent.

2. Melanie Antunez Rendon is a total dependent of Martin Antunez Rendon (deceased) under Labor Code section 3501(a).
3. The issue of whether Melanie Antunez Rendon is entitled to death benefits under Labor Code section 4703.5(a) is deferred.
4. All other issues are deferred.

IT IS FURTHER ORDERED THAT this matter is hereby **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR



/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 10, 2024

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**ROSA GUTIERREZ
LAW OFFICES OF SEF KRELL
ROSENBERG YUDIN**

SRO/es

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.

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