

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JERIS L. WUNDERLICH, Deceased)
 Claimant)
)
VS.)
)
CASEY'S GENERAL STORES, INC.)
 Respondent)
)
AND)
)
EMCASCO INSURANCE CO.)
 Insurance Carrier)

Docket No. **1,035,955**

ORDER

Respondent and its insurance carrier request review of the February 5, 2008 Award by Administrative Law Judge Brad E. Avery. The Board heard oral argument on May 21, 2008.

APPEARANCES

Michael G. Patton of Emporia, Kansas, appeared for claimant's parents. Ronald J. Laskowski of Topeka, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. At oral argument before the Board, the parties agreed that the deposition of Robert Kenneth Truhlsen, taken January 17, 2008, is part of the evidentiary record and was considered by the Administrative Law Judge (ALJ) although not listed as part of the record in his Award.

ISSUES

Jeris L. Wunderlich tragically died as a result of injuries suffered in a work-related automobile accident on April 13, 2007. She had no dependents but was survived by her parents. K.S.A. 2007 Supp. 44-510b(d) provides that where death results from injury and

the employee does not leave any dependents a lump sum payment of \$25,000 shall be made to the employee's legal heirs. However, the statute further provides the lump-sum payment is not required if the employer gets the employee a life insurance policy providing coverage of at least \$18,500, with the beneficiaries to be designated by the employee.

This is a claim for the \$25,000 lump-sum payment for Jeris L. Wunderlich's legal heirs, her parents. The ALJ determined the life insurance policy that respondent procured for Jeris L. Wunderlich did not satisfy the exception clause of K.S.A. 2007 Supp. 44-510b(d) as the life insurance portion of the policy only provided coverage in the amount of \$10,000. Consequently, the ALJ ordered respondent to pay \$25,000 to Ms. Wunderlich's legal heirs, her parents, with each receiving \$12,500.

Respondent requests review of whether the ALJ erred in awarding the \$25,000 lump-sum benefit pursuant to K.S.A. 2007 Supp. 44-510b(d). Respondent argues that it paid for a life insurance/accidental death and dismemberment policy for Ms. Wunderlich which paid \$30,000 to her designated beneficiary. As that payment exceeded the \$18,500 minimum coverage requirement of K.S.A. 2007 Supp. 44-510b(d), respondent further argues it should not be required to pay the lump-sum benefit.

Jeris L. Wunderlich's parents argue that the ALJ's Award should be affirmed.

The issue for the Board's determination is whether the life insurance policy respondent procured for Jeris L. Wunderlich satisfied the minimum coverage amount of \$18,500 mandated by K.S.A. 2007 Supp. 44-510b(d). If not, respondent is required to pay the \$25,000 lump-sum benefit to the legal heirs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The facts are not disputed. Jeris L. Wunderlich suffered fatal injuries arising out of and in the course of her employment on April 13, 2007. She left no dependents and her parents are her only legal heirs.

As an employee benefit, respondent provides and pays for group term life insurance for its full-time employees. The policy paid for by respondent provides for life insurance as well as accidental death and dismemberment. The amount of life insurance is \$10,000 with supplemental benefits in the event of accidental death and dismemberment in the amount of \$10,000 plus an additional \$10,000 if the insured was wearing a seat belt at the time of accidental death. Employees also have the option to pay for increased amounts of insurance coverage as well as coverage for dependents.

Jeris L. Wunderlich qualified for and was provided the basic life insurance policy with supplemental benefits for accidental death and dismemberment. She did not elect to purchase additional amounts of coverage or dependent coverage. She designated Tim Yette, her boyfriend, as the beneficiary of the policy.

After Ms. Wunderlich's death, the insurance benefits were paid to Mr. Yette. Initially, he received a check for \$10,000 for the life insurance and was told the additional \$10,000 for the accidental death was pending further review. The June 19, 2007 letter from respondent to Mr. Yette provided in pertinent part:

It is with our sincere sympathy and condolence that we forward the enclosed check in the amount of \$10,000 in accordance with Company policy governing employee life insurance benefits. The additional \$10,000 AD&D is pending further review by the insurance company.¹

Mr. Yette later received an additional \$20,000 which included \$10,000 for accidental death and \$10,000 for the seat belt benefit included in the accidental death and dismemberment policy provisions. The August 7, 2007 letter from respondent to Mr. Yette provided in pertinent part:

It is with our sincere sympathy and condolence that we forward the enclosed check in the amount of \$20,000 in accordance with Company policy governing employee life insurance benefits. This additional \$20,000 represents the Accidental Death portion of the claim.²

K.S.A. 2007 Supp. 44-510b(d) provides:

If an employee does not leave any dependents, either wholly or partially dependent upon the employee, a lump-sum payment of \$25,000 shall be made to the legal heirs of such employee in accordance with Kansas law. However under no circumstances shall such payment escheat to the state. **Notwithstanding the provisions of this subsection, no such payment shall be required if the employer has procured a life insurance policy, with beneficiaries designated by the employee, providing coverage in an amount not less than \$18,500.** (Emphasis Added).

Pamela Collins, mother of the deceased, and Micky Wunderlich, father of the deceased, testified that Ms. Wunderlich was not married and did not have any children therefore there were no dependents that were either wholly or partially dependent upon Ms. Wunderlich.

¹ Truhlsen Depo., Ex. 2 at 2.

² *Id.*, Ex. 2 at 1.

Robert Truhlsen, respondent's risk manager, testified that respondent initially paid \$10,000 and then an additional \$20,000 to Ms. Wunderlich's beneficiary, Timothy Yette. The premium for the life insurance policy was paid for by respondent.

The ALJ noted that although the total payments made to Ms. Wunderlich's designated beneficiary exceeded the statutory minimum of \$18,500, nonetheless, only \$10,000 of those payments were made pursuant to a life insurance policy. Ms. Wunderlich's insurance policy provided for basic life insurance with supplemental benefits for accidental death and dismemberment. Simply stated, the face amount of the life insurance policy was \$10,000 which is below the statutory minimum. The ALJ further noted:

The accidental death and dismemberment insurance policy defines loss as:

Loss means loss of life, hand, foot, or sight which:

- 1) Is caused solely and directly by an accident;
- 2) Occurs independently of all other causes; and
- 3) Occurs within 365 days after the accident.

By its terms the accidental death and dismemberment coverage would exclude some losses compensable under the Workers Compensation Act, e.g. a preexisting condition which was aggravated or accelerated by working conditions and became fatal or a fatal natural and probable consequence of an accidental injury. See *Hanson v. Logan*, USD 326, 28 Kan. App. 2nd 92 (2000). The policy may also not cover an occupational disease which became fatal more than 365 days after the date of disablement. See K.S.A. 44-5a06. The policy would also not cover the claimant in the event of a heart attack when there was no accident but rather the "work necessary to precipitate the disability (or death) was more than the employee's usual [sic] work in the course of employee's regular employment." See K.S.A. 44-501(e). The court finds there was no literal or substantial compliance with K.S.A. 44-510d(b) and payment should be made to the parents in accordance with the above stated terms.

K.S.A. 2007 Supp. 44-510d(b)(d) requires that respondent provide a life insurance policy in a minimum amount of \$18,500. The life insurance policy provided Ms. Wunderlich was in the amount of \$10,000. A life insurance policy does not require proof that the cause of death was accidental.³ And the \$10,000 for life insurance was promptly paid to Ms. Wunderlich's designated beneficiary. Moreover, it is clear that the accidental death and dismemberment provisions are not the same as a life insurance policy because the additional supplemental benefits required additional elements of proof, i.e., that the death was accidental and a seat belt was worn at the time of accidental death. This further demonstrates that the life insurance benefit under the policy was limited to \$10,000.

³ *Stockham v. Life Ins. Co. of North America*, 27 Kan. App. 2d 639, 3 P.3d 97 (2000).

In order to avoid payment of \$25,000 to the deceased's legal heirs the statute requires a life insurance policy with a minimum amount of \$18,500. The life insurance policy respondent provided for Ms. Wunderlich had a face amount of \$10,000. The Board agrees with the ALJ's analysis and affirms the Award.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Brad E. Avery dated February 5, 2008, is affirmed.

IT IS SO ORDERED.

Dated this 30th day of June 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael G. Patton, Attorney for Claimant's parents
Ronald J. Laskowski, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge