

The claimant married Gary Higginbotham in Ventura, California, on January 9, 1980. They adopted a child, Caitlin Marie Higginbotham, in 1995 or 1996. Caitlin Higginbotham's date of birth is June 11, 1993. Caitlin Higginbotham is the claimant's only child. Gary Higginbotham testified he was the claimant's only dependent at the time of her death.

The ALJ stated:

. . . , the evidence establishes that at the time of her death, Claimant had a surviving legal spouse, Gary Higginbotham, and no wholly dependent children. As such, the Court finds that Gary Higginbotham is entitled to survivor benefits pursuant to K.S.A. 2018 Supp. 44-510b. Pursuant to K.S.A. 2018 Supp. 44-510b(a), Gary Higginbotham, as Claimant's surviving legal spouse, is entitled to a \$60,000 lump sum payment. Mr. Higginbotham is also entitled to weekly benefits not to exceed a total amount of \$300,000, or until Mr. Higginbotham dies, whichever occurs first. The court notes that Respondent has paid weekly benefits to Mr. Higginbotham to date at a weekly rate of \$701.22; however, taking into account the stipulated average weekly wage of \$1,107.71, the proper weekly compensation rate should be the statutory maximum in place at the time of Claimant's death, which is \$737.00.

Claimant further raises the issue of whether the damages cap for death benefits under the Kansas Workers Compensation Act and the denial of the right to a trial by jury on the issue of damages is unconstitutional. This Court is not a court established pursuant to Article III of the Kansas Constitution and does not have jurisdiction to review the constitutionality of the Kansas Workers Compensation Act.

On April 21, 2023, the claimant filed a timely application for review by the Workers Compensation Appeals Board, pursuant to K.S.A. 44-551.

PRINCIPLES OF LAW AND ANALYSIS

The Board adopts and affirms the ALJ's Award in total. The claimant's two constitutional arguments are considered, but the Board may not decide the constitutionality of Kansas laws.¹ The issues are best reserved for a court of competent jurisdiction. Pursuant to K.S.A. 44-551, the Board has heard the case and it may proceed to the appellate courts.

AWARD

WHEREFORE, the Board affirms the Award dated April 19, 2023.

¹ *Pardo v. United Parcel Serv.*, 56 Kan. App. 2d 1, 10, 422 P.3d 1185 (2018).

IT IS SO ORDERED.

Dated this _____ day of July, 2023.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (via OSCAR)

Matthew Bretz
Elizabeth Phelps
Hon. Ali Marchant