

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

**CHRISTIAN MANZUR (deceased);
JONATHAN MANZUR (dependent),
*Applicant***

vs.

**CARPET LAND MILLS/VARTAN AVEDISSZADEHN;
HARTFORD CASUALTY INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ10549257
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration on December 30, 2019 in order to further study the legal and factual issues raised by the Petition for Reconsideration, and to enable us to reach a just and reasoned decision. This is our Opinion and Decision after Reconsideration.

Applicant sought reconsideration of the Findings and Award (F&A) issued on October 25, 2019 by a workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that Jonathan Manzur (applicant) was a partial dependent of deceased injured worker Christian Manzur (decedent), and awarded applicant dependency benefits pursuant to Labor Code¹ section 4702, subdivision (a)(4)(A).

Applicant contends that applicant's prior receipt of Pell grant money was irregular and inconsequential to the support applicant received and needed from decedent for his living expenses, and therefore did not enhance his customary living standard; and, that the determination of whether applicant was a partial or total dependent must be liberally construed in favor of applicant.

Defendant filed an Answer to Petition for Reconsideration (Answer). The WCJ filed a Report and Recommendation (Report) recommending that the Petition for Reconsideration be

¹ All further references are to the Labor Code unless otherwise noted.

denied because the Pell grant money provided applicant with 25% of his living costs and therefore substantially affected his dependency status toward decedent. Applicant filed a Response to Report and Recommendation on Petition for Reconsideration (Response), which we consider as a request to file a supplemental response pursuant to WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964; former Cal. Code Regs., tit. 8, § 10848). The request is granted.

We have reviewed the record in this case, the allegations of the Petition for Reconsideration, the Answer,² the Response, and the contents of the Report. For the reasons set forth below, it is the decision after reconsideration to rescind the WCJ's decision, and issue new findings of fact that applicant was wholly dependent for support on decedent on the date of injury, and a new award consistent with section 4702, subdivision (a)(3).

BACKGROUND AND DISCUSSION

Section 3501 provides a conclusive presumption that any child of an injured worker whose death arose out of and in the course of employment who is "under the age of 18 years" is "wholly dependent for support" on the deceased, injured worker. (Lab. Code, § 3501.)³ "In all other cases, questions of entire or partial dependency and questions as to who are dependents and the extent of their dependency shall be determined in accordance with the facts as they exist at the time of the injury of the employee." (Lab. Code, § 3502; *Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd. (Steele)* (1999) 19 Cal.4th 1182, 1189-1190 [64 Cal.Comp.Cases 1].)

Here, it is undisputed that on July 22, 2011, decedent was shot in the face during the course of his employment, which resulted in his death on July 24, 2011. (Minutes of Hearing and Summary of Evidence (MOH), October 21, 2019, p. 2; App. Exh. 1, Police Report; App. Exh. 2, Death Certificate; App. Exh. 4, Application for Adjudication of Claim.) On the date of his father's injury, applicant was 24 years old. (MOH, p. 3.) Therefore, applicant is not entitled to the conclusive presumption in section 3501. However, based on the substantial evidence in the record,

² We note that the Answer is not quite two pages long and does not respond with law or fact to any allegation in the Petition for Reconsideration; defendant simply "concur[s] with and relies on" the WCJ's October 24, 2019 Opinion on Decision and the Report. (Answer, pp. 1-2.)

³ Section 3501 also provides a conclusive presumption for children of an injured worker whose death arose out of and in the course of employment who have been found by a trier of fact to be "physically or mentally incapacitated from earning..." (Lab. Code, § 3501(a).) There is no issue raised regarding applicant's physical or mental incapacity to earn at the time of his father's death.

we find that applicant was “wholly dependent for support” on decedent “at the time of the injury of the employee,” i.e., on July 22, 2011. (Lab. Code, § 3502, emphasis added.)

Applicant testified that during the month of July 2011, he was not employed and received approximately \$840.00 per month from his father to cover monthly living expenses. (MOH, pp. 3-4.) At trial, applicant testified that he had been a full time student since the fall of 2006, that he was a “full-time student at College of the Canyons, and then attended CSUN starting in the fall of ’11.” (MOH, p. 3:13-15.) Applicant testified that he did not start CSUN until August 2011; that in July 2011, “he was a student at neither school;” and, that his “father was his only source of income...” (*Id.*, p. 3:20-23.)

It is also undisputed that sometime prior to his father’s death, applicant applied for and received a Pell Grant, which is based on financial need. (*Id.*, p. 4.) The Pell Grant paid his tuition directly, which was between \$300.00 and \$450.00, and “he would receive anywhere from \$1,500 to \$2,300 every six months for living expenses.” (*Id.*, p. 4:13-14.) The WCJ determined that because the Pell Grant provided both tuition and 25% of applicant’s living expenses “while he is in school,” that the Pell Grant substantially affected applicant’s dependency status on his father. (See *Munoz v. Workers’ Comp. Appeals Bd.* (1971) 19 Cal.App.3d 144, 147 [36 Cal.Comp.Cases 488].)

However, it is well established that dependency status for death benefit purposes is determined by the facts existing *at the time of injury*. (*Steele, supra*, 19 Cal.4th at p. 1193; *Granell v. Industrial Acci. Com.* (1944) 25 Cal.2d 209 [1944 Cal. LEXIS 309]; *Pacific Employers Ins. Co. v. Chavez* (1936) 5 Cal.2d 247, 252-253 [1936 Cal. LEXIS 389] [Mother’s receipt of life insurance proceeds after injured workers’ death did not change her total dependence on the deceased worker at the time of injury.]; *Hartford Acci. & Indem. Co. v. Industrial Acci. Com. (Sampson)* (1925) 197 Cal. 17, 19 [1925 Cal. LEXIS 210] [Death benefit awarded to the sister of a deceased employee who was dependent on the deceased at the time of injury despite the fact that she became self-supporting a few days later.]

This matter went to trial on October 21, 2019 on the sole issue of “[d]ependency of Jonathan Manzur.” (MOH, p. 2:12-13.) As stated above, applicant testified that on the date of his father’s injury, he was not in school and was wholly dependent on his father for support. Defendant failed to impeach applicant’s testimony, or to establish that applicant received Pell Grant money for living expenses in between school semesters. The only evidence produced by defendant at the

October 21, 2019 trial was a February 20, 2019 letter from applicant's attorney requesting settlement of the case. (Def. Exh. A, October 21, 2019.) The letter has no relevance to the issue of applicant's dependency.

Accordingly, there is substantial, uncontroverted evidence in the record establishing that applicant was wholly dependent on decedent on decedent's July 22, 2011 date of injury. It is therefore our decision after reconsideration to rescind the WCJ's decision, and issue new findings of fact that applicant was wholly dependent for support on decedent on the date of injury, and a new award consistent with section 4702, subdivision (a)(3).

For the foregoing reasons,

IT IS ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued on October 25, 2019 by a workers' compensation administrative law judge is **RESCINDED** and **REPLACED** with the following findings of fact and award:

FINDINGS OF FACT

1. Christian Manzur sustained an injury arising out of and in the course of his employment on July 22, 2011, which resulted in his death on July 24, 2011.
2. On July 22, 2011, decedent Christian Manzur contributed \$840.00 per month for the support of his son, Jonathan A. Manzur, born January 3, 1987. On July 22, 2011, Jonathan A. Manzur was wholly dependent for support on decedent Christian Manzur.
3. Under Labor Code section 4702, subdivision (a)(3), Jonathan A. Manzur is entitled to total dependency benefits in the total amount of \$250,000.00.
4. Applicant's attorney is entitled to an attorneys' fee of 15% or \$37,500.00.

AWARD

AWARD IS MADE in favor of **JONATHAN A. MANZUR** against **HARTFORD INSURANCE COMPANY** of:

1. Dependency benefits pursuant to the Findings of Fact, Paragraph 3;
2. Attorneys' fees pursuant to the Findings of Fact, Paragraph 4.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 19, 2021

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

**JONATHAN A. MANZUR, C/O LAW OFFICES OF RON NOLAN
LAW OFFICES OF RON NOLAN
THE LAW OFFICES OF LYDIA B. NEWCOMB**

AJF/abs

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