

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

**VANESSA FATZER (Deceased); KATRINA S. HAGEN, Director of
Department of Industrial Relations, administrator for Death Without
Dependents Unit; and JOEL STAPLETON III, *Applicants***

vs.

**KELLY-MOORE PAINT COMPANY INC. and ACE AMERICAN INSURANCE
COMPANY, administered by ESIS, INC., *Defendants***

Adjudication Number: ADJ12616197

Stockton District Office

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

Applicant, the Director of Industrial Relations as administrator for the Death Without Dependents Unit (hereafter, DWD) seeks reconsideration of the Findings of Fact and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on October 21, 2022, wherein the WCJ found that Joel Stapleton III (Mr. Stapleton) was a partial dependent of decedent Vanessa Fatzer (Ms. Fatzer).

DWD contends that it is entitled to death benefits pursuant to Labor Code section 4706.5, because Mr. Stapleton failed to establish that he was a dependent of Ms. Fatzer.¹

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We did not receive an Answer from defendant, nor from Mr. Stapleton.

We have considered the allegations in the Petition, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

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

BACKGROUND

Ms. Fatzer sustained an injury arising out of and occurring in the course of employment, due to a motor vehicle accident while employed by defendant as sales representative, on February 11, 2019. The injury resulted in her death on February 13, 2019. Ms. Fatzer had lived with Mr. Stapleton in his father's residence for approximately fourteen months, prior to the injury that caused her death. (Joint Exh. 100, Joel Stapleton III, December 3, 2019, deposition transcript, pp. 9 – 10.)

Defendant, Mr. Stapleton, and DWD, proceeded to trial on August 4, 2022. The issue submitted for decision was whether Mr. Stapleton was a partial dependent of Ms. Fatzer. (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 4, 2022, p. 2.)

DISCUSSION

Section 3502 states that in cases not subject to the section 3501 presumption:

[Q]uestions 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.)

Section 3503 states in part:

No person is a dependent of any deceased employee unless in good faith a member of the family or household of the employee, ...

(Lab. Code, § 3503.)

The identity of dependents, whether their dependency is total or partial, and the extent of partial dependency are determined in accordance with the facts as they exist at the time of the injury of the employee. (Lab. Code, § 3502; *Massey v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 674, 677 [58 Cal.Comp.Cases 367, 368]; *Atlantic Richfield Co. v. Workers' Comp. Appeals Bd.* (1982) 31 Cal.3d 715, 722 [47 Cal.Comp.Cases 500, 504].) It is not necessary that a partial dependent, who is a good faith member of the household, be a part of a community with the deceased employee, such that they shared in accumulated property of the injured worker, i.e., they need not be married to the deceased employee. (*City of Carmel v. Workers Comp. Appeals Bd.*

(1999 W/D) 64 Cal.Comp.Cases 780; see also *Gladden v. State of California, Department of Corrections* 2011 Cal.Wrk.Comp. P.D. LEXIS 214; ADJ6739541 (panel decision).²

Any award, order, or decision of the Appeals Board. must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) It is well established that a WCJ's opinions regarding witness credibility are entitled to great weight, because of the WCJ's "opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand." (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500, 505]; *Sheffield Medical Group v. Workers' Comp. Appeals Bd. (Perez)* (1999) 70 Cal.App.4th 868 [64 Cal.Comp.Cases 358]; *Nash v. Workers' Comp. Appeals Bd.* (1994) 24 Cal.App.4th 1793 [59 Cal.Comp.Cases 324]; *Greenberg v. Workmen's Comp. Appeals Bd.* (1974) 37 Cal.App.3d 792 [39 Cal.Comp.Cases 242].)

Here, the only evidence in the trial record addressing the issue of Mr. Stapleton's partial dependency is his deposition testimony and that of his father, Joel Stapleton Jr. (See Joint Exhs, 100 and 101.) The finding that Mr. Stapleton was a partial dependent of Ms. Fatzer is based on the deposition testimony as noted. (See F&O, p. 2, Opinion on Decision; Report, pp. 2 – 4.) The F&O does not include a finding regarding the credibility of Mr. Stapleton and his father. Actually, based on the existing record, the WCJ could not make a finding regarding their credibility because although Mr. Stapleton and his father were both present at the trial, neither was called as a witness (MOH/SOE), and a deposition transcript is not an adequate basis for determining credibility. (*Garza, supra.*) Clearly deposition testimony can be used as evidence, but it is for the purpose of clarifying, corroborating, or rebutting additional evidence in the record. For example, transcripts of doctors' deposition are routinely admitted into evidence and their testimony pertains to the opinions stated in their reports that are also admitted into evidence. (CCP § 2025.620; Cal. Code Regs., tit. 8, § 10682.) Also, a deposition transcript is often admitted into evidence in order to clarify or rebut the testimony of a trial witness. However, the depositions of Mr. Stapleton and his

² Although panel decisions of the Appeals Board are not binding precedent, they are citable to the extent they point out the contemporaneous interpretation and application of the workers' compensation laws by the Board. (*Smith v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 530, 537, fn. 2 [65 Cal.Comp.Cases 277]; *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145, 147].)

father do not pertain to any other evidence, documentary or otherwise, submitted at the trial. As noted above, the depositions in and of themselves are not evidence as to the credibility of the witnesses. Absent a determination of the witnesses' credibility their testimony does not constitute substantial evidence upon which a decision may be based.

Finally, we note that various cases cited and discussed by defendant in support of its assertions in the Petition, actually pertain to the amount of the death benefit owed to a partial dependent, not the issue of whether he or she was a partial dependent. (See e.g., *Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (1999) 19 Cal.4th 1182 [64 Cal.Comp.Cases 1]; *City of Carmel v. Workers Comp. Appeals Bd.* (1999 W/D) 64 Cal.Comp.Cases 780.) Again, the "sole issue" submitted for decision was "whether or not" Mr. Stapleton was a partial dependent of Ms. Fatzer. (MOH/SOE.)

The Appeals Board has the discretionary authority to further develop the record where there is insufficient evidence to determine an issue that was submitted for decision. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) Under the circumstances of this case, we recommend upon return to the trial level, that the WCJ schedule a status conference in order to help the parties decide how best to develop the record and to discuss the appropriate means for resolving this matter, either through settlement or further proceedings.

Accordingly, we grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Department of Industrial Relations/Death Without Dependents Unit's Petition for Reconsideration of the Findings of Fact and Order issued by the WCJ on October 21, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 21, 2022, Findings of Fact and Order is **RESCINDED**, and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 12, 2022

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

**OD LEGAL OAKLAND
DEATH WITHOUT DEPENDENTS UNIT SAN FRANCISCO
YOUNG, COHEN & DURRETT, LLP
JOEL STAPLETON, III**

TLH/mc

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