

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G506822

SAYEL MOHAMMED (DECEASED), EMPLOYEE

CLAIMANT

v.

MAVERICK TRANSPORTATION, LLC, EMPLOYER

RESPONDENT #1

**CORVEL ENTERPRISES COMPANY, INC.,
INSURANCE CARRIER/TPA**

RESPONDENT #1

**DEATH AND PERMANENT DISABILITY
TRUST FUND**

RESPONDENT #2

OPINION FILED NOVEMBER 14, 2023

Hearing before Administrative Law Judge, James D. Kennedy, on the 26TH day of September, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Mr. Gary Davis, Attorney-at-Law, Little Rock, Arkansas.

Respondent #1 is represented by Mr. David C. Jones, Attorney-at-Law, Little Rock, Arkansas.

Respondent # 2 is represented by Mr. David L. Pake, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 26th day of September, 2023, to determine the issues of whether the parents of the decedent, Yaha I Mohammed and Yusra Yameen Salama, are entitled to partial dependency death benefits pursuant to Arkansas Code Annotated §11-9-111 and Arkansas Code Annotated §11-9 527, and attorney fees. A copy of the Prehearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed on or about September 9, 2015, when the claimant sustained a compensable injury resulting in his death. At the time of the injury, the claimant's average weekly wage was \$1,100.13. On September 9, 2015, the claimant

was married to Krystle Martish. On September 24, 2015, the carrier filed an Amended AR-4, accepting the compensability of the claim. On March 28, 2017, Krystle Marsh filed an AR-C for widow's benefits in Arkansas. The respondent/carrier paid funeral expenses. On August 4, 2017, Krystle Martish requested a voluntary dismissal of her claim. On August 8, 2017, the parents of Sayel Mohammed filed an AR-C claiming rights to parental survivor benefits arising out of the death of their son on September 9, 2015. On November 13, 2017, an Order of Dismissal on the claim filed by Krystle Martish was entered. There was no objection to these stipulations with the exception that the document that was named an AR-4 in the Prehearing Order was actually an AR-2 and after this correction, the Prehearing Order was admitted into the record.

The claimant's, respondent's, and the trust fund's contentions were all set out in their respective responses to the prehearing questionnaire and made a part of the record without objection. In addition, simultaneous briefs were requested thirty (30) days from the date of the hearing, with instructions that no brief was to be longer than ten (10) pages. The briefs have been blue-backed and attached to this Opinion. The sole witness to testify at the time of the hearing was Yaha Mohammed. From a review of the record as a whole, to include medical reports and other matters properly before the Commission and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. That an employer/employee relationship existed on or about September 9, 2015, when Sayel Mohammed sustained a compensable injury resulting in his death.
3. At the time of the injury, Sayel Mohammed earned an average weekly wage of \$1,100.13.
4. On September 9, 2015, Sayel Mohammed was married to Krystle Martish.
5. On September 24, 2015, the carrier filed an Amended AR-2, accepting the compensability of the claim.
6. On March 28, 2017, Krystle Martish filed an AR-C for widow's benefits in Arkansas.
7. The respondent/carrier paid funeral expenses.
8. On August 4, 2017, Krystle Martish filed a request for voluntary dismissal of her claim.
9. On August 8, 2017, the parents of Sayel Mohammed filed an AR-C, claiming rights to parental survivor benefits arising out of the death of their son on September 9, 2015.
10. On November 13, 2017, an Order of Dismissal of the claim filed by Krystle Martish was entered.
11. That the parents of the decedent, Yaha I Mohammed and Yursa Yameen Salama, have failed to satisfy the required burden of proof to show that they are entitled to partial dependency death benefits pursuant to Ark. Code Ann. § 11-9-111 and Ark. Code Ann. §11-9- 527.
12. The question of attorney fees is moot.
13. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Prehearing Order along with the prehearing questionnaires of the parties were admitted into the record without objection. The claimant submitted one exhibit consisting of thirty-two (32) pages. Respondents submitted multiple exhibits: "Exhibit A" consisting of ten (10) pages of incoming transactions; "Exhibit One" consisting of correspondence

and a prehearing questionnaire; and “Exhibit Two” consisting of the deceased marriage license and correspondence; “Respondent Two’s Exhibit One”, consisting of fifty (50) pages of forms and correspondence. The parties also submitted “Joint Exhibit One” which consisted of the Deposition of Yaha Mohammed; an exhibit called “Claimant’s Exhibit One” that consisted of forty-one (41) pages of miscellaneous documentation; and an exhibit entitled “Respondents Exhibit A”.

Yahya Mohammed was the only witness to testify at the time of the hearing. He was born on January 10, 1954, and was married to Yahay Amin Mohammed Salama in 1981, and their marriage produced four (4) girls and five (5) boys. The deceased, their oldest son Sayal, was killed in an accident while driving for Maverick Transport in September of 2015. Upon questioning, Mr. Mohammed responded that they were dependent on Sayel’s income and would receive money from him stating, “because we’re one family. He would help us and his siblings.” “In Palestine and the Islamic World in general, the father would take care of the kids and they would spend money on them and they would help them get married and settled, but when he gets older we don’t have pensions and retirements like other places, it’s the kid’s responsibility to take care of their parents when they get older.” He went on to state that he had worked all of his life taking care of his family, “but now that I am much older, I can’t work anymore.” “My wife never worked.” “She was a housewife.” When Sayel was working for the respondent, Mr. Mohammed testified that he and his wife still had children at home. (Tr. 10-14)

Under cross-examination by Respondent #1’s attorney, Mr. Mohammed admitted that he was indeed working while Sayel was working for respondent #1. He admitted working for about two (2) years after his son’s death but stated that this work was not

available every day. He also admitted he was able to make his car payment and support his family after Sayel's death. He had used some of the money from Sayel to expand their home from two (2) to four (4) rooms, hoping that Sayel would return and stay with them some day. He admitted that he had stated in his deposition that Sayel had wanted him to rest and that he would support him. (Tr. 16-18) Mr. Mohammed also admitted receiving money from his brother, Hassan, or his brother, Ibrahim, every once in a while. (Tr. 20)

Under cross-examination by Respondent #2's attorney, Mr. Mohammed admitted he had worked as a blacksmith even before his marriage and that was enough to help raise his children when he was young and capable of working hard. "I had my workshop and it was enough to take care of the kids when they were young." He also admitted that one of his children suffered from a hearing disability. In regard to children at home, he stated that his daughters were married but he still had two (2) sons at home, Hanser and Mohammed, along with his son, Issac, who suffered from the hearing issue. Hanser works and Mr. Mohammed was attempting to get the other son a job. He went on to say that while he worked as a blacksmith, he also took care of his elderly parents. (Tr. 21-23) He also admitted that when Sayel left for the United States, he had a thousand dollars on him and that he did not provide any additional money to him because he was able to live with his uncles. (Tr. 25) In regard to Sayel's marriage to Krystle Martish on May 3, 2010, Mr. Mohammed testified he was not aware of the marriage until Sayel's death. He also admitted that at some point through his brother Ibrahim, he became aware that Krystle Martish and his brother Ibrahim went to a hearing in Kentucky that was continued. (Tr. 26-27)

In regard to the pertinent documentary evidence by the claimant, a marriage license between Mr. Mohammed and his wife was made part of the record, along with the birth certificate for the birth of Sayel in 1984. In addition, Sayel granted a general power of attorney to his father. (Cl.Ex. 1, PP. 1, 4, 5, 6) The death certificate for Sayel was also made part of the record. (Cl.Ex. 1, P. 7) In addition, documents were admitted into the record which appeared to show multiple significant wire transactions from sender, Sayel Mohammed, to Yahya Issacs Younes Mohammed in Palestine from 2011 through the middle of 2014. (Cl. Ex. 1, P. 20-32)

Respondent #1 submitted documents into the record without objection which consisted of a Kentucky marriage license between Sayel Yahay Mohammed and Krystle Anne Martish dated May 3, 2010, as well as a letter from attorney Greg Giles requesting a voluntary dismissal of Krystle Martish's request for survival benefits involving the death of Sayel Mohammed, deceased. The request provided she no longer wanted to pursue her claim but, "would prefer to see his parents receive any benefits that would be available as a result of Mr. Mohammed's death." (Resp. #1, Ex. 2)

The transcript of the workers' compensation claim hearing in Kentucky involving Ibrahim Mohammed, the administrator of the estate of Sayel Mohammed and Krystle Martish, the widow of Sayel Mohammed, was also made part of the record and it provided that Sayel's parents lived on the West Bank of Palestine. Ibrahim Mohammed admitted that he would receive money from Sayel and send it to his brother, Sayel's father. The money sent list provided that Sayel had sent a total of \$50,700.00, with the transfers starting on October 28, 2000, and continuing until October 28, 2015. Ibrahim Mohammed admitted that he would sometimes combine the money from Sayel with money he

personally sent. (Resp. #2, Ex.1, PP. 10, 11, & 13) The hearing in Kentucky was held before Judge Davis who stated, “that Mr. Ibrahim Mohammed’s first hand knowledge of the situation is sufficient for me to find dependency by the relatives in Palestine.” (Resp. #2, Ex. 1. PP. 16, 17) Mr. Ibrahim Mohammed also testified that Sayel was living with him in his home during September of 2015, and that Krystle only came by his house one night. He thought that Krystle and Sayel had been married for about six (6) years. (Resp. #2, Ex. 1, P. 26) Krystle Martish also testified during the Kentucky hearing. She stated that she was married to Sayel but separated at the time of his death and that the two (2) of them had no children. (Resp. #1, Ex. 2, P. 37) There was no formal notice of separation filed with the Kentucky Court. (Resp. Ex. 2, P. 40)

Krystle Martish filed a Form AR-C on March 28, 2017, and then filed a formal request for a voluntary dismissal of her application for benefits with the Arkansas Workers’ Compensation Commission, and an Order was entered granting the Order of Dismissal Concerning Krystle Martish on November 13, 2017. (Resp. #2, Ex. 1, PP. 46, 47, 49, 50) It is also noted that Ibrahim Mohammed filed a Form AR-C on August 8, 2017. (Resp. #2, Ex. 1, P. 48)

The deposition of Yahya Mohammed was also admitted as a joint exhibit. He testified he was the father of Sayel and his brother Ibrahim Mohammed lived in the United States. (Jt. Ex. 1. P. 7) He admitted not having a bank account and that he would receive the money that he was sent and spend it. He would receive the money from various places and sometimes when Sayel was busy, he would send the money through Mr. Mohammed’s brother or his wife, Sayel’s wife, and sometimes even Mr. Mohammed’s brother’s son or daughter. (Jt. Ex. 1, PP. 10-12, 15, 17, 18) Mr. Mohammed testified that

when he lost Sayel, he had to return to work. (Jt. Ex. 1, P. 22) Sayel was his oldest son and there were two (2) older daughters. (Jt. Ex. 1, P. 38)

Sayel's Death Certificate provided that he died in Indiana on September 9, 2015, and his birth certificate provided that he was born on March 1, 1984. (Cl. Ex. 1).

DISCUSSION AND ADJUDICATION OF ISSUES

The facts in this matter are basically undisputed. Sayel Mohammed, the deceased employee, was born in Palestine and came to the United States where he was working for the respondent when sadly, he lost his life. The death was accepted as work-related by the respondents who paid for his funeral expenses. At the time of his untimely demise, he was married to Krystle Martish, with the couple marrying on May 3, 2010. However, at the time of his death, he and his wife were living separate and apart while Sayel lived and stayed with his uncle. There were no children born of the marriage. His uncle, Ibrahim Mohammed, was apparently named the administrator of the estate of Sayel Mohammed and Krystle Anne Martish, the widow of Sayel Mohammed, in regard to a claim filed in Kentucky. Per the evidence, a hearing was commenced in regard to this matter in the Commonwealth of Kentucky's Department of Workers' Claims on July 26, 2016. Krystle Martish later filed a Form AR-C in Arkansas on March 28, 2017, and then requested a voluntary dismissal of her claim and an Order was obtained dismissing her claim on November 13, 2017. Ibrahim Mohammed (the uncle) filed a Form AR-C on August 8, 2017, on behalf of his brother and wife. There also appears to be no doubt that Sayel sent money home to his parents in significant amounts over a period of time for their assistance and support, although there appears to be some disagreement on when

and how. In any case, it also appears that Yahya Mohammed, the father of Sayel, worked during this period of time and continued working for two (2) years after Sayel's death.

The primary issue before the Commission in this matter is the dependency death benefits pursuant to the Arkansas Workers' Compensation Act. Arkansas Code Annotated §11-9-527(c) provides that compensation for the death of an employee shall be paid to those persons who are wholly and actually dependent upon the deceased employee in the following percentage of the average weekly wage of the employee and **in the following order of preference:** (emphasis added)

- (1) (A) (i) To the widow if there is no child, thirty five (35%) and the compensation shall be paid until her death or remarriage. (ii) However, the widow shall establish, in fact some dependency upon the deceased employee before she will be entitled to benefits as provided in this section.

Ark. Code Ann. § 11-9-527 goes on to specifically state how compensation is to be made if there are one or more children. If there are no children and no widow, the statute provides under (4) that twenty-five percent (25%) is to be paid to each parent.

It is also noted that Ark. Code Ann. §11-9-111 provides that compensation to alien, non-residents of the United States or Canada shall be the same in amount as provided for residents, except that alien, non-resident dependents in any foreign country shall be limited to the surviving wife or children, or if there is no surviving wife or children, to the surviving father or mother who the employee has supported either wholly or in part, for the period of (1) one year prior to the date of the injury.

In *White Oake Construction v. Oliver*, 2011 Ark. App. 682, 386 S.W.3d 616 (2011), it was determined that Ark. Code Ann. §11-9-527 and Ark. Code Ann. §11-9-11, "must be read together to understand the Arkansas legislatures intent. Even when statutes are to be strictly construed, they must be read in their entirety harmonizing each subsection

where possible.” It is clear Arkansas law gives preference to the claim of the widow. It is also clear that the surviving widow has the burden to establish facts showing dependency on her husband before being entitled to benefits. *Royal v. Bypass Diesel & Wrecker, Inc.*, 2014 Ark. App. 90, 432 S.W.3d 139 (2014) Here, the widow made the initial claim for benefits, but then requested that her claim be dismissed and even contended that the benefits should be paid to Sayel’s parents. There was absolutely no evidence that the widow had any expectations of support from her husband at the time of his death and further, that no child was born of the marriage. A later claim was made by the parents of Sayel through his uncle. Mr. Mohammed, Sayer’s father, testified, and it is found to be believable, that in the culture that the deceased was raised in, the children are responsible for the care of their aging parents, a clearly excellent method for a society to meet the health and well being needs of aging parents in the opinion of this weathered and worn Administrative Law Judge, who also cannot imagine the pain of losing a loyal son. However, culture and beliefs do not control the payment of workers’ compensation benefits in the state of Arkansas. The statutes do. Here, the surviving widow was receiving no benefits or support from the deceased, and consequently, based upon the workers’ compensation law of Arkansas, the surviving widow who has priority for benefits is not entitled to receive benefits under the Arkansas Workers’ Compensation Act and consequently the parents of the decedent are also not entitled to partial dependency benefits pursuant to Ark. Code Ann. §11-9-111 and Ark. Code Ann. §11-9- 527, due to the fact that the widow has survived and Arkansas law does not provide that family members can choose who receives the benefits.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the parents of the decedent, Yaha I. Mohammed and Yusra Yameen Salama, have failed to satisfy the required burden of proof to show that they are entitled to partial dependency benefits pursuant to Arkansas Code Annotated § 11-9-111 and Arkansas Code Annotated § 11-9-527. Consequently, the question of attorney fees is moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge