

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H205665**

**ALEJANDRO MORALES NAVARRETE, DEC'D,
EMPLOYEE**

CLAIMANT

**HIXSON LUMBER SALES, INC.,
EMPLOYER**

RESPONDENT

**UNION STANDARD INS. CO.,
CARRIER**

RESPONDENT

OPINION FILED AUGUST 3, 2023

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 10, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Angela Galvis Schnuerle, Attorney at Law, North Little Rock, Arkansas.

Respondents represented by Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 10, 2023, the above-captioned claim was heard in Little Rock, Arkansas. A pre-hearing conference took place on February 7, 2023. The Prehearing Order entered on February 8, 2023, pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

The parties discussed the stipulations set forth in Commission Exhibit 1. With additional ones reached at the hearing, they are the following, which I accept:

NAVERRETE – H205665

1. The Arkansas Workers' Compensation Commission (the "Commission") has jurisdiction over this matter.
2. The employee/employer/carrier relationship existed on or about July 23, 2022, when Claimant sustained compensable injuries that resulted in his death.
3. Respondents accepted Claimant's fatal injuries as compensable and paid benefits pursuant thereto, including statutory funeral expenses and the no-dependency fee to the Death & Permanent Total Disability Trust Fund.
4. Claimant's average weekly wage of \$814.97 entitles him to a total disability compensation rate of \$544.00.
5. None of the alleged dependents were wholly and actually dependent upon Claimant for purposes of Ark. Code Ann. § 11-9-527(c) (Repl. 2012).
6. Both Simon Navarrete Rosas and Ugarit Navarrete Rosas at one time or another, while living in the home of Alejandro Morales Callentano, rented a room from Mr. Callentano and paid rent and utilities.

Issues

The parties discussed the issues set forth in Commission Exhibit 1. After amendments at the hearing, the following were litigated:

NAVERRETE – H205665

1. Whether Claimant's father, Alejandro Morales Callentano, mother, Arianna Medai Navarrete Rosas, and siblings Grace Medai Morales Navarrete, Emily Gelet Morales Navarrete, and Evelyn Arleth Morales Navarrete are entitled to receive partial dependency benefits under Ark. Code Ann. § 11-9-527(i)(1) (Repl. 2012), and in what amount.
2. Whether Claimant's counsel is entitled to a controverted attorney's fee under Ark. Code Ann. § 11-9-715 (Repl. 2012).
3. Whether Claimant should be sanctioned under Ark. Code Ann. § 11-9-717 (Repl. 2012) in connection with this claim.

All other issues have been reserved.

Contentions

The respective contentions of the parties, following amendments at the hearing, read as follows:

Claimant:

1. Claimant's parents and siblings contend that they should be considered dependents of him under the Arkansas Workers' Compensation Act because they relied on him to help support the entire family.

Respondents:

1. Respondents contend that Claimant died on July 23, 2022, without any dependents. He was 18 years old at the time of his injury and death; that he had just begun working for Respondent employer on June 23, 2022;

that he was still a high school student; and that his parents and siblings were not wholly and actually dependent upon him for support.

2. In addition, Respondents contend that they are entitled to sanctions consisting of their expenses due to the filing of this claim and request for a hearing. Arkansas Code Annotated Section 11-9-717(a)(2) (Repl. 2012) provides:

The signature of an attorney or party constitutes a certificate by him or her that:

- (A) He or she has read the claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, motion or other paper;
- (B) To the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
- (c) It is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Respondents contend that this request for benefits and request for a hearing is in violation of § 11-9-717 in that a reasonable inquiry into the facts demonstrates that Claimant's family was not wholly or even partially dependent upon him at the time of his death. Claimant's father earned gross wages of \$81,943 in 2021. When only his take home pay for the 12 months immediately preceding Claimant's death is calculated, the father brought home a total of at least \$65,000 as the full wages from June 2021 were not included in the payroll records to be

submitted into evidence. The majority of the family's household expenses were paid out of the father's bank account. For the 12 months immediately preceding Claimant's death, the family's expenses from this account totaled only \$55,946.48. In addition to the father's income and bank account, Claimant's parents maintained a separate bank account that during the one-year preceding Claimant's death held as much as \$45,061.52 but no less than \$7,986.17. The origins of the money in this account are unknown, but not necessary when the expenditures from this account also show that it was used for the benefit of the family's household expenses as well. The mere fact that Claimant was paid disability benefits from the state or that he worked for Respondent employer is not sufficient to formulate a reasonable belief that the family was wholly and actually dependent upon Claimant for this income. A review of Claimant's total income from his disability checks shows that he was paid approximately \$1,735 from January 2021 through June 2021. (The images are blurry and difficult to read, thus an approximate amount is used.) At best, only \$300 from this income was never deposited into Claimant's checking account. The testimony from both parents showed that Claimant turned this money over to them, and that they, in turn, doled out his money to him to pay for band uniforms, clothing, shoes, band trips, food, and other normal expenses of a high school student. In addition, Claimant's mother testified that Claimant attended his junior prom and had expenses for his clothing, food, date, and limousine. It is reasonable to conclude that this missing \$300 in addition to supplemental money from the parents was

necessary to cover his expenses. Claimant's paychecks from Respondent Employer totaling \$3,985.34 were all directly deposited into his account. His income from his earnings and disability checks totaled \$5,775.80. Out of Claimant's checking account, a grand total of \$657.00 was debited. The family has not and cannot offer any credible evidence that any of this money was used in any manner to pay household expenses or support them. Finally, although Claimant had just turned 18, he was still a high school student living at home with his parents. Thus, even assuming his family used any of his money to pay household expenses, he received free rent and utilities, the use of the 2019 GMC truck that they had purchased for him, and the gas and insurance to cover the truck from the parents. Claimant was wholly and actually dependent upon his parents—not the other way around. *See Butler v. Labor Finders*, 2006 Ark. App. LEXIS 104, 2006 WL 235088.¹ Therefore, based on a reasonable inquiry of the facts, reasonable persons cannot conclude that Claimant's family has a claim for dependency benefits from his death. Accordingly, Respondents contend that they are entitled to their costs and expenses due to the filing of this claim.

¹This is an unpublished opinion. Per Ark. Sup. Ct. R. 5-2(c):

Opinions of the Supreme Court and Court of Appeals issued before July 1, 2009, and not designated for publication shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as *res judicata*, collateral estoppel, or law of the case).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, deposition transcripts, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the hearing witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The preponderance of the evidence establishes that Claimant's father and mother, Alejandro Morales Callentano and Arianna Medai Navarrete Rosas, were partially dependent upon Claimant in the amount of ten percent (10%) each under Ark. Code Ann. § 11-9-527(i)(1) (Repl. 2012). Accordingly, per § 11-9-527(c)(4), they are each entitled to weekly benefits amounting to two and one-half percent (2.5%) of Claimant's average weekly wage, or \$20.37.
4. The preponderance of the evidence establishes that Claimant's siblings Grace Medai Morales Navarrete, Emily Gelet Morales Navarrete, and Evelyn Arleth Morales Navarrete, Alejandro Morales Callentano and Arianna Medai Navarrete Rosas, were partially dependent upon Claimant in the amount of ten percent (10%) each under Ark. Code Ann. § 11-9-527(i)(1) (Repl. 2012). Accordingly, per § 11-9-527(c)(4), they are each

entitled to weekly benefits amounting to one and one-half percent (1.5%) of Claimant's average weekly wage, or \$12.22.

5. Claimant's estate has proven by a preponderance of the evidence that Respondents controverted the partial dependency benefits awarded above to his parents and siblings. Accordingly, Claimant's counsel, Angela Galvis Schnuerle, Esq., is entitled to a controverted fee on those benefits, pursuant to Ark. Code Ann. § 11-9-715 (Repl. 2012).
6. Respondents have not proven by a preponderance of the evidence that Claimant's counsel should be sanctioned under Ark. Code Ann. § 11-9-717 (Repl. 2012).

CASE IN CHIEF

Summary of Evidence

Witnesses. The hearing witnesses were Alejandro Morales Callentano and Arianna Medai Navarrete Rosas. Simon Navarrete and Ugarit Rosas testified via deposition. The transcripts of these depositions have been admitted into evidence as outlined below.

Exhibits. In addition to the Prehearing Order discussed above, admitted into evidence in this case were the following: Claimant's Exhibit 1, his Prehearing Questionnaire Response plus exhibits thereto, consisting of 20 numbered pages; Claimant's Exhibit 2, the transcript of the deposition of Simon Navarrete Rosas taken March 10, 2023, consisting of 29 pages; Claimant's Exhibit 3, the transcript of the deposition of Ugarit Navarrete Rosas taken March 10, 2023, consisting of 30 pages;

NAVERRETE – H205665

Respondents' Exhibit 1, financial records, consisting of one index page and 97 numbered pages thereafter; Respondents' Exhibit 2, their Prehearing Questionnaire Response, consisting of three numbered pages; and Respondents' Exhibit 3, their Supplemental Prehearing Questionnaire Response, consisting of three numbered pages.

At the hearing, the parties were directed to file post-hearing briefs. They did so on May 31, 2023. Those briefs, five and nine numbered pages in length, respectively, have been blue-backed to the record.

Adjudication

A. Dependent Benefits

Introduction. Herein, Claimant's estate has contended that his parents, Alejandro Morales Callentano and Arianna Medai Navarrete Rosas, and his minor siblings Grace Medai Morales Navarrete, Emily Gelet Morales Navarrete, and Evelyn Arleth Morales Navarrete are entitled to receive partial dependency benefits under Ark. Code Ann. § 11-9-527(i)(1) (Repl. 2012). Respondents have argued to the contrary, asserting that the evidence does not show that the above-named individuals were even partially dependent upon Claimant.

Standards. The applicable provision here is Ark. Code Ann. § 11-9-527(i)(1) (Repl. 2012), which reads:

If the employee leaves dependents who are only partially dependent upon his or her earnings for support at the time of injury, the compensation payable for partial dependency shall be in the proportion that the partial dependency bears to total dependency.

The statute further provides that “[a]ll questions of dependency shall be determined as of the time of the injury.” *Id.* § 11-9-527(h). Dependency is an issue of fact that must be determined in light of the surrounding circumstances. *Hicks v. Bates*, 104 Ark. App. 348, 292 S.W.3d 850, 2009 Ark. App. LEXIS 460; *Finley v. Farm Cat, Inc.*, 103 Ark. App. 292, 288 S.W.3d 685 (2008).

Evidence. As the parties have stipulated, Claimant was fatally injured at work on July 23, 2022. This is the operative date for purposes of determining partial dependency. His birth date was June 27, 2004. Thus, at the time of his death, he had been a legal adult for only 26 days. Claimant had been working for Respondent Hixson for just 30 days; his start date there was June 23, 2022. The parties have stipulated that his average weekly wage at Hixson was \$814.97.

Prior to his obtaining this job, Claimant’s income had consisted of (1) odd jobs, for which he was paid in cash; and (2) monthly warrants (in varying amounts) from the State of Arkansas that began in January 2022 and totaled approximately \$1,700.00. It is not clear from the evidence how much Claimant earned from the odd jobs, which included cleaning out chicken houses and cutting hay. Claimant opened a bank account in June 2022. Prior to then, his parents held his money for him and gave him cash on request. He used these funds for, inter alia, personal expenses that included the costs of being in the high school band and attending his prom. His own money was also used for fuel, clothing, and other necessities. It must be kept in mind that such expenses as these would normally be covered by one’s parents when the party in

question is still a minor—and Claimant was a minor for the vast majority of the time that he was making money.

The evidence that was adduced at the hearing shows that Claimant's earnings were not only used to cover his own expenses, but those of his family. During the testimony of Claimant's father at the hearing, the following exchange took place:

Q. Did Alejandro, Jr., give you his check?

A. Yes.

Q. And you stated that you spent that money [on] general bills. Could you please tell the judge some of the bills you paid with that money?

A. The thing is, my son was gonna graduate on the 11th of this month; so he bought a truck to go to university.

Q. Now, you said that you—it was spent on general household expenses. I'm asking you what household expenses did you pay with that money?

A. Yes. Oh, yes. Electricity, water, the TV signal. We paid the insurance on the house, and car insurance and the cell phones, and internet for the house. He needed that when he was studying.

...

Q. Have you always needed extra money to pay all of your bills?

A. Yes.

Q. Now, I'm asking now for a little bit of historical account. Way back, did you have people living with you?

A. Yes.

Q. And did they pay you rent?

A. Yes.

Q. And was that to help pay the bills?

A. Yes.

Q. But you didn't have anybody paying rent at the time of Alejandro's death, correct?

A. That's right.

...

Q. Did you rely on your son's money for the family?

A. Yes.

Q. However, you also contributed your money to support your family, correct?

A. Yes.

...

Q. You purchased a pick-up truck, correct?

A. That's right.

Q. And was that expense—how were you going to pay for that truck?

A. It's very difficult.

Q. Whose monies were you going to use to pay for that truck?

A. My son's.

Q. Do you still have that truck?

A. Yes.

In her testimony, Claimant's mother added that her son gave money to help purchase groceries. The funds that Claimant contributed were important because, among other

NAVERRETE – H205665

issues, his mother did not work outside the home. The take home pay of Claimant's father was not enough, by itself to support the family. The best illustrations of this are not only that they resorted to using income from their minor child, but that the balance of the parents' joint account dwindled significantly.

In addition to the support Claimant furnished his family members by covering his own expenses and those of the family at large, he also supported them through specific individual items. These included medications for his mother and sister, and school supplies and entertainment for his siblings.

Discussion. An alleged beneficiary must establish facts showing his or her dependency upon the decedent claimant in order to be held entitled to benefits pursuant to § 11-9-527. *Roach Mfg. Co. v. Cole*, 265 Ark. 908, 582 S.W.2d 268 (1979). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.* After due consideration, I credit the testimony of Claimant's father and mother as outlined above.

Based on the foregoing evidence, I find that Claimant's three siblings had a reasonable expectation of support from him. *See Robinson v. Ed Williams Constr. Co.*, 38 Ark. App. 90, 828 S.W.2d 860 (1992); *Williams v. Cypress Creek Drainage*, 5 Ark.

NAVERRETE – H205665

App. 256, 635 S.W.2d 282 (1982). Again, this is taking into account both Claimant's payments towards general family expenses (of which the siblings benefitted along with everyone else in the household), as well as specific items of support discussed *supra*.

As for Claimant's mother and father, I find that the credible evidence shows that they, too, had a reasonable expectation of support from him along these same lines. In so doing, I again note that while the parents had a legal duty to support Claimant while he was a minor, he nonetheless made substantial contributions toward that support. The fact that Claimant was never under a legal duty to furnish financial support of these two individuals is irrelevant. As the Full Commission wrote in *Garcia v. Coast to Coast Carports, Inc.*, 2009 AR Wrk. Comp. LEXIS 16, Claim No. F513705 (Full Commission Opinion issued Feb. 25, 2009):

The Arkansas legislature has seen fit to recognize that some people, like the claimant in this case, although not legally required to do so, honor a moral duty to support their families. Here, the claimant's mother and siblings were fortunate enough to have such an honorable son and brother.

The Arkansas Court of Appeals in *Pinecrest Mem. Park., Inc., v. Miller*, 7 Ark. App. 185, 646 S.W.2d 33 (1983), found in a decision awarding partial dependency benefits that

A showing of actual dependency does not require proof that without the [decedent's] contribution [the alleged dependent] would lack the necessities of life but only that the decedent's contributions were relied upon by the [alleged dependent] to maintain her accustomed mode of living.

This is certainly the case here. The support given by Claimant to his parents and three siblings in the forms of his cash earnings, his payments from the State of Arkansas, and

NAVERRETE – H205665

from the proceeds of his position at Respondent Hixson, were relied upon by them in order to maintain their accustomed mode of living. To reiterate, this reliance was a reasonable one under *Robinson, supra*.

In sum, after consideration of the credible evidence, I find that Claimant's father and mother, Alejandro Morales Callentano and Arianna Medai Navarrete Rosas, were partially dependent upon Claimant in the amount of ten percent (10%) each under § 11-9-527(i)(1) (Repl. 2012). Consequently, in accordance with § 11-9-527(c)(4), they are each entitled to weekly benefits amounting to two and one-half percent (2.5%) of Claimant's average weekly wage, or \$20.37. Furthermore, I find that the preponderance of the evidence establishes that Claimant's siblings Grace Medai Morales Navarrete, Emily Gelet Morales Navarrete, and Evelyn Arleth Morales Navarrete were partially dependent upon Claimant in the amount of ten percent (10%) each under § 11-9-527(i)(1) (Repl. 2012). Thus, under § 11-9-527(c)(4), they are each entitled to weekly benefits amounting to one and one-half percent (1.5%) of Claimant's average weekly wage, or \$12.22.

B. Controversion

Introduction. Claimant's estate has asserted that its attorney is entitled to a controverted fee in this matter.

Standard. Arkansas Code Annotated § 11-9-715(a)(1) (Repl. 2012) provides in relevant part:

(a)(1)(A) Fees for legal services rendered in respect of a claim shall not be valid unless approved by the Workers' Compensation Commission.

(B) Attorney's fees shall be twenty-five percent (25%) of compensation for indemnity benefits payable to the injured employee or **dependents of a deceased employee**. Attorney's fees shall not be awarded on medical benefits or services except as provided in subdivision (a)(4) of this section.

...

(B)(i) In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half ($\frac{1}{2}$) by the employer or carrier in addition to compensation awarded; and one-half ($\frac{1}{2}$) by the injured employee or dependents of a deceased employee out of compensation payable to them.

(ii) The fees shall be allowed only on the amount of compensation for indemnity benefits controverted and awarded.

(iii) However, the commission shall not find that a claim has been controverted if the claimant or his or her representative has withheld from the respondent during the period of time allotted for the respondent to determine its position any medical information in his or her possession which substantiates the claim.

(Emphasis added)

Discussion. One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1998). It is clear that but for Claimant's estate instigating the portion of this litigation concerning the entitlement of his family members to partial dependency death benefits, none would have been paid. Respondents' counsel acknowledged this at the outset of the hearing, as shown in the following colloquy:

JUDGE FINE: As I discussed with the parties before going on record, again, I was not the judge who conducted this prehearing telephone conference, and I am not the one who created the Prehearing Order. There needs to be an issue added concerning whether Ms. Schnuerle is

entitled to a controverted fee and certainly under the statute, in the event that these death benefits are awarded to any of these individuals, she would be entitled to a statutory fee, and that was not addressed in that, but I feel that needs to be addressed. So I'm not hearing objections from the parties, particularly the Claimant—I mean, from the Respondents. I will go ahead and add that as an issue as well.

MS. McKINNEY: That's proper. We did controvert dependence, so that is a proper issue.

Therefore, Claimant's estate has proven by a preponderance of the evidence that Respondents controverted those benefits, and that the appropriate attorneys' fee here should be 25 percent (25%) of the indemnity benefits awarded herein, one-half of which would be paid by Claimant's estate and one-half to be paid by Respondents in accordance with § 11-9-715. *See Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

C. Sanctions

Respondents have asserted that that counsel for Claimant's estate should be sanctioned under Ark. Code Ann. § 11-9-717 (Repl. 2012), quoted extensively in their Contention No. 2, *supra*. However, the estate has prevailed in the quest for partial dependency benefits for Claimant's surviving immediate family members. *See supra*. For that reason, Respondents have not met their burden under this issue.

CONCLUSION AND AWARD

Respondents are directed to furnish/pay benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid,

NAVERRETE – H205665

pursuant to Ark. Code Ann. § 11-9-809 (Repl. 2012). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

Claimant's attorneys are entitled to a full 25 percent (25%) attorney's fee awarded herein, one-half of which is to be paid by Claimant's estate and one-half to be paid by Respondents in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2012).

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge