



Employee Dies, but Benefits Survive

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Updated Monday, May 21, 2007

Schoemehl v. Treasurer of the State of Missouri ruled that the surviving spouse of a permanently and totally disabled employee, who died of causes unrelated to his work injury, could recover the unpaid, unaccrued balance of the employee's permanent total disability benefits upon his death. After sustaining a work related knee injury, Fred Schoemehl filed a claim for compensation against his employer and the Second Injury Fund. Employer paid Fred Schoemehl temporary total disability benefits and medical expenses. Subsequently, the employee died from causes unrelated to his work injury. His 62 year old wife and sole dependent filed and settled an amended claim for compensation against the employer. The only remaining claim was that against the Second Injury Fund for permanent total disability. After hearing, the Administrative Law Judge held that Fred Schoemehl was permanently and totally disabled as a result of the combination of his work related knee injury and his pre-existing disabilities, and found the Second Injury Fund liable to the wife for permanent total disability benefits until the date of the employee's death. The Administrative Law Judge denied the wife's claim for permanent total disability benefits for the remainder of her lifetime, following the employee's death.

The Industrial Commission and the Western District Court of Appeals affirmed. At issue before the Court of Appeals was whether the right to compensation for the permanent total disability of an injured employee, who dies of causes unrelated to his work injury, survives to the dependents of that injured employee. The Court of Appeals ruled that Fred Schoemehl was not entitled to compensation for permanent total disability following his death and, therefore, his wife, as his dependent, was likewise not entitled to compensation for the employee's permanent total disability after the date of the employee's death.

The Supreme Court granted transfer. Before the Supreme Court, the wife argued that since she was Fred Schoemehl's dependent, she should be considered an "employee" under the Workers' Compensation Act and, thus, she was entitled to permanent total disability benefits for the remainder of her lifetime. As the Supreme Court observed, no prior Missouri court had decided whether the right to compensation for permanent total disability of an injured employee, who dies from causes unrelated to his work injury, survives to the dependents of that injured employee. In resolving the issue before it, the Supreme Court looked to Section 287.200, setting forth the period for which permanent total disability benefits are to be paid, as well as Section 287.020.1, defining the word "employee", when deceased, to include his dependents. The Supreme Court relied

primarily on Section 287.230.2, providing that when an employee is entitled to compensation and the employee dies from a cause unrelated to his work injury, compensation ceases, and “unless there are surviving dependents at the time of death”. There was no dispute that Fred Schoemehl died from a cause other than his work injury and that his wife was his sole surviving dependent.

The Supreme Court observed that Section 287.230.2 referred to “compensation” generally, and made no distinction between permanent total disability compensation and other benefit awards. Thus, the Supreme Court held that under Section 287.230.2, Fred Schoemehl’s right to compensation for both accrued and unaccrued permanent total disability benefits survived to his wife, because she was the employee’s dependent. The wife was therefore entitled to payment of the unpaid, unaccrued balance of the employee’s permanent total disability benefits. The Supreme Court reversed the Industrial Commission’s Award, and remanded the claim to the Industrial Commission.

The Second Injury Fund filed a Motion For Rehearing with the Missouri Supreme Court. Therein, the Fund argued that the Supreme Court’s Opinion was contrary to decades of application of the workers’ compensation law, and significantly expanded workers’ compensation liability for the Fund. On 3/20/07, the Supreme Court denied the Second Injury Fund’s Motion For Rehearing. Thus, the decision is final.

The Supreme Court’s decision will have a far-reaching impact. *Schoemehl* has, in effect, created an entirely new category of workers’ compensation beneficiaries. These beneficiaries are the surviving dependents of a permanently and totally disabled employee, who dies from unrelated causes.

In the case of currently viable and future permanent total disability cases, this will mean that upon the death of the employee, the surviving dependents can step into the shoes of the deceased employee, and receive benefits for permanent total disability in the employee’s stead, and potentially for as long as the dependent survives. Thus, in evaluating exposure and settlement value in any actual or potential permanent total disability case, the existence of, ages of, and health of the employee’s dependents are factors which now must be considered. If a finding of permanent total disability has been made, the death of the employee will not result in a termination of benefits, except insofar as the employee has no dependents.

In cases where permanent total disability benefits were terminated on account of the employee’s death, it is now certain that some of those cases will have to be re-opened for the purpose of paying benefits to the deceased employee’s dependents, beginning on the date of death, and going forward. The extent to which the statute of limitations may bar the re-opening of such cases remains unclear, as does the issue of whether the dependents will have to file a new Claim for Compensation, or whether they can simply be substituted as parties in any currently pending, or previously pending case.

Since the *Schoemehl* decision was an interpretation of statutory provisions that have been in effect for decades, the holding is retroactive, although the statute of limitations should constitute a bar to most, but certainly not all, of the cases where benefits have already been terminated on the assumption that death was the end of the permanent total disability.

Although the Supreme Court rejected the Second Injury Fund's concern over the possibility that its decision could allow a claim on the part of a dependent, of a dependent, by pointing out that under Section 287.240, a "dependent" is an individual who is dependent on the date of the employee's injury, that finding provides no guidance as to what effect, if any, that a termination of dependency which occurs between the date of injury and the employee's death, will have on future rights, such as where a permanently and totally disabled employee divorces a spouse, or even re-marries, subsequent to the injury, but prior to the date of death. In fact, it is not entirely clear if the provisions regarding dependency set forth in Section 287.240 (the death benefit section) will apply equally to all surviving permanent total disability claims. But if they do, those provisions, such as the one that terminates benefits upon the re-marriage of a spouse, will constitute a limitation on these new benefits. Section 287.240 may not answer all dependency issues, since that statutory section was enacted to apply to death benefits resulting from a work-related injury or disease, not to permanent total disability benefits.

The decision in *Schoemehl* will have a great impact, not only on employers and insurers, but on the Second Injury Fund, since it is more often found liable for permanent total disability benefits, than are employers and insurers. Also, the decision will affect insurance pools and self-insurance guaranty funds.

There was legislation pending in both the Missouri House and Senate intended to abrogate the *Schoemehl* decision, and to make changes in the appropriate statutory provisions to make it clear that permanent total disability benefits are intended to expire upon the unrelated death of the injured employee. Although the Senate version passed without opposition, the House failed to act before the session ended on May 18, 2007. Thus, absent a Special Session, the decision cannot again be addressed legislatively until January 2008.

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