

Decision of the Appeal Division

Number: 00-1241

Date: August 14, 2000

Panel: John J. Steeves

**Subject: Section 91(2) — Referral to Review Board —
Standing of Deceased Worker's Estate to Carry on Appeal**

- (1) This is an appeal with regards to the worker's widow's appeal of the Review Board findings dated January 5, 2000.

Issue(s)

- (2) The issue in this case is whether the deceased worker's estate has standing to carry on an appeal filed and then suspended before the worker's death and to initiate an appeal after the death of the worker or whether these appeals are extinguished upon the worker's death. A majority of the Review Board found that the worker's estate did not have standing. As described below, pursuant to section 91(2) of the *Workers Compensation Act*, this decision is to direct the Review Board to reconsider the Review Board finding generally.

Background

- (3) The worker made a claim for idiopathic pulmonary fibrosis in 1995 and the claim was denied in a decision dated December 4, 1995. A manager confirmed this decision in a letter dated February 20, 1996, this decision was appealed to the Review Board and new medical evidence was obtained to support the worker's claim for compensation. On this basis, the worker's appeal was suspended and the matter was referred back to the Board to consider the new evidence.
- (4) In a decision dated October 21, 1997, the Board continued to deny the worker's claim for compensation. On November 10, 1997, the worker passed away and his widow continued the suspended appeal of the February 20, 1996 and initiated a new appeal of the October 21, 1997 decision.

Decision and Reasons

- (5) As acknowledged by the majority, the issue of whether an estate has standing to proceed with an appeal after the death of a worker has been considered and decided by a leading case of the Review Board and which is reported at 14 *Workers' Compensation Reporter* 375. That case, after

extensive discussion of the various issues, decided that an estate does have standing. That leading decision also made the following statement:

The issue this appeal poses has arisen in a number of appeals and the outcome has varied considerably among various Review Board panels. A Chair's panel was therefore constituted to enhance consistency in approach to this jurisdictional question.

- (6) The majority accepted that the worker's circumstances in this case are "essentially similar" to those addressed in the leading decision. However, they declined to follow this previous decision for the following reasons:

There is no statement in the Chair's panel finding nor is there any statutory requirement to follow the lead of that or any other Chair's panel finding. The majority does not agree that the estate of a deceased worker has standing. Colleague, [member of majority panel], provided reasons for disagreeing with the Chair's panel finding in her dissent in Review Board appeal [. . .]. She also relied on the reasons and findings of a previous Review Board panel in appeal [. . .]. [The member of majority panel] has not been dissuaded from her position on this matter and the other member of the majority endorses her arguments. . . .

- (7) The dissenting member of the Review Board panel in the case that is the subject of this appeal would have allowed the appeal for essentially the same reasons as the leading case.
- (8) I think that the circumstances of this appeal are amenable to the application of section 91(2) of the *Workers Compensation Act*, which is as follows:

Where an appeal is commenced under subsection (1), the appeal division may direct the review board to reconsider the matter either generally or on a particular issue, and the appeal division may withhold its decision pending the finding of the review board.

- (9) As reflected in the Review Board's leading case, the question of the status of an estate of a deceased worker is exceedingly complex and I am reluctant to enter into a re-analysis of that issue. Further, it seems clear that the intended effect of the Review Board's leading case was to bring some consistency in findings of the Review Board on this issue. Issues of consistency within the Review Board are, in my view, better left to the Review Board itself.
- (10) Therefore, further to the authority in section 91(2) of the Act, I direct that the Review Board reconsider the Review Board findings of January 5, 2000 generally. By this I mean that the issue of the standing of the estate should be addressed and, if the findings are that the estate does have standing, then the other issues arising from the decisions appealed to the Review Board should be decided. As authorized by section 91(2) of the Act I withhold my decision of the Review Board findings of January 5, 2000 pending the new Review Board findings.

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- (11) I appreciate that this result may add more time and complications for the estate of the worker but, for the reasons given above, I believe this is the appropriate result in this case at this time. However, bearing in mind the concerns of the estate, I request that the chair of the Workers' Compensation Review Board arrange for the provision of new findings in a timely manner.

[Editor's note: The Review Board's further consideration of this matter is published in Volume 17(1) of the Workers' Compensation Reporter at page 173.]

