

Alaska Workers' Compensation Appeals Commission

Deborah Harris, domestic partner of
Kerry Fadely, deceased,
Appellant,

vs.

Millennium Hotel and New Hampshire
Insurance Co.,
Appellees.

Final Decision

Decision No. 183 June 28, 2013

AWCAC Appeal No. 13-005
AWCB Decision No. 13-0028
AWCB Case No. 201116890

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 13-0028, issued at Anchorage on March 21, 2013, by southcentral panel members Janel Wright, Chair, Patricia Vollendorf, Member for Labor, and Amy Steele, Member for Industry.

Appearances: Eric C. Croft, The Croft Law Office, and Peter C. Renn, Lambda Legal Defense and Education Fund, Inc., for appellant, Deborah Harris, domestic partner of Kerry Fadely, deceased; Colby J. Smith, Griffin & Smith, for appellees, Millennium Hotel and New Hampshire Insurance Co.

Commission proceedings: Appeal filed April 3, 2013; briefing completed June 19, 2013; oral argument was not requested.

Commissioners: James N. Rhodes, S. T. Hagedorn, Laurence Keyes, Chair.

By: Laurence Keyes, Chair.

1. Introduction.

Appellant, Deborah Harris (Harris), was the same-sex domestic partner of Kerry Fadely (Fadely). At all relevant times, Fadely was employed by the appellee, the Millennium Hotel (Millennium) in Anchorage, as a food and beverage manager. On October 29, 2011, while at work, Fadely was fatally shot by a disgruntled former employee of the hotel whom she had terminated a few days earlier.

Harris submitted a workers' compensation claim dated March 27, 2012, seeking death benefits. Millennium filed an Answer and a Controversion Notice dated May 4,

2012, denying that Harris was entitled to death benefits. The parties stipulated to a set of facts on December 19, 2012. Harris's claim was heard on the written record by the Alaska Workers' Compensation Board (board) on February 26, 2013.

The board issued its decision on March 21, 2013.¹ On the basis of certain provisions of the Alaska Workers' Compensation Act (Act) and a decision of the Alaska Supreme Court (supreme court), *Ranney v. Whitewater Engineering*,² the board denied Harris's claim.³ The board also declined to consider Harris's constitutional challenges to Alaska law that preclude her from obtaining benefits as a same-sex domestic partner, concluding that it lacked jurisdiction to decide constitutional issues.⁴

Harris appealed the board's decision to the Workers' Compensation Appeals Commission (commission). Acknowledging that the commission, like the board, lacks jurisdiction to decide constitutional issues, the parties have appropriately postured this appeal to preserve for appeal to the supreme court 1) the issue whether Harris is entitled to death benefits, and 2) their constitutional arguments in a forum that has jurisdiction to hear them. The commission affirms the board's denial of death benefits to Harris.

2. Factual background and proceedings.

As mentioned, the facts were stipulated to by the parties. Because they are not disputed and have been succinctly stated in the board's decision,⁵ we adopt its recitation of the facts.⁶ We have omitted those facts that are not significant to the analysis.

¹ See *Deborah Harris v. Millennium Hotel*, Alaska Workers' Comp. Bd. Dec. No. 13-0028 (Mar. 21, 2013).

² 122 P.3d 214 (Alaska 2005).

³ See *Harris*, Bd. Dec. No. 13-0028 at 15.

⁴ See *id.*

⁵ See *id.* at 2-4.

⁶ The board refers to Harris as the Claimant, Fadely as the Employee, and Millennium as the Employer.

On October 29, 2011, Employee, a food and beverage manager at the Millennium Hotel in Anchorage, Alaska, died in a work-related injury.⁷

Claimant contends she was in a same-sex relationship with Employee when Employee died, and was her same-sex domestic partner. Claimant's assertions include: if Alaska law allowed her and Employee to marry, or recognized an out-of-state same-sex marriage certificate, they would have married; Claimant and Employee were in an exclusive, committed, financially interdependent relationship for over a decade by the time of Employee's death in 2011; Claimant and Employee lived for the majority of their ten-year relationship together in Anchorage; they wore matching rings to signify their love and commitment for one another and referred to each other as "partner" or "spouse"; they jointly submitted an Affidavit of Domestic Partnership so Claimant could access health insurance Employee received through a prior employer; had joint credit card accounts; jointly leased an apartment and were looking to jointly purchase a home; and on Facebook, a social media website, Employee listed Claimant as her "spouse" and stated Employee and Claimant were in a domestic partnership. Claimant submitted affidavits from herself, her daughter, and a friend attesting to the couple's committed and financially interdependent relationship. Claimant asserts she was financially dependent upon Employee.⁸

Claimant and Employee were not married to one another when Employee died, and had never been married to one another.⁹

Employee's death occurred in the course and scope of employment.¹⁰

3. Standard of review.

The commission is to uphold the board's findings of fact if they are supported by substantial evidence in light of the whole record. Substantial evidence is such relevant

⁷ R. 0001.

⁸ R. 0037-40, 0041-64, 0067-71, 0072-73, 0017.

⁹ R. 0037-40, 0041-64, 0095-102.

¹⁰ R. 0001, 0095-102.

evidence which a reasonable mind might accept as adequate to support a conclusion.¹¹ The question whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law.¹² We exercise our independent judgment when reviewing questions of law and procedure.¹³

4. *Discussion.*

a. *Harris is not entitled to death benefits.*

Under AS 23.30.215(a),¹⁴ death benefits are payable to the widow or widower and children of the deceased employee. AS 23.30.395(40) defines “widow” as the

¹¹ See, e.g., *Norcon, Inc. v. Alaska Workers’ Compensation Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

¹² *Wasser & Winters Co., Inc. v. Linke*, Alaska Workers’ Comp. App. Comm’n Dec. No. 138, 5 (Sept. 7, 2010).

¹³ See AS 23.30.128(b).

¹⁴ AS 23.30.215(a) reads:

(a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to or for the benefit of the following persons:

(1) reasonable and necessary funeral expenses not exceeding \$10,000;

(2) if there is a widow or widower or a child or children of the deceased, the following percentages of the spendable weekly wages of the deceased:

(A) 80 percent for the widow or widower with no children;

(B) 50 percent for the widow or widower with one child and 40 percent for the child;

(C) 30 percent for the widow or widower with two or more children and 70 percent divided equally among the children;

(D) 100 percent for an only child when there is no widow or widower;

(E) 100 percent, divided equally, if there are two or more children and no widow or widower;

(3) if the widow or widower remarries, the widow or widower is entitled to be paid in one sum an amount equal to the

(footnote continued)

decedent's wife; AS 23.30.395(41) defines "widower" as the decedent's husband. Furthermore, AS 25.05.013(b) states: "A same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage." In terms of this statutory law, Harris does not qualify as a widow or widower eligible to receive death benefits.

The supreme court has provided additional case law authority for denying Harris death benefits in *Ranney v. Whitewater Engineering*. In that appeal, a surviving unmarried cohabitant of the deceased employee was denied death benefits.

Based on the foregoing law, Harris cannot be considered married to Fadely, nor is she the widow or widower of Fadely. Therefore, Harris is not entitled to death benefits and Millennium is under no obligation to pay them.

b. The commission does not have jurisdiction to decide constitutional issues.

In a relatively recent decision, the supreme court held that "[a]dministrative agencies do not have jurisdiction to decide issues of constitutional law."¹⁵ The commission, like the board, is an administrative agency.¹⁶ We have acted in conformity with this restriction on our jurisdiction.¹⁷ Accordingly, the commission must decline to

compensation to which the widow or widower would otherwise be entitled in the two years commencing on the date of remarriage as full and final settlement of all sums due the widow or widower;

(4) if there is no widow or widower or child or children, then for the support of father, mother, grandchildren, brothers, and sisters, if dependent upon the deceased at the time of injury, 42 percent of the spendable weekly wage of the deceased to such beneficiaries, share and share alike, not to exceed \$20,000 in the aggregate;

(5) \$5,000 to a surviving widow or widower, or equally divided among surviving children of the deceased if there is no widow or widower.

¹⁵ *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007).

¹⁶ *See Alaska Public Interest Research Group v. State*, 167 P.3d at 36.

¹⁷ *See, e.g., Rockstad v. Chugach Eareckson Support Services*, 2012 WL 163897 (Alaska, Jan. 18, 2012).

hear and decide Harris’s constitutional challenges to the Act, including any federal constitutional challenge to Art. I, § 25 of the Alaska Constitution, which reads: “To be valid or recognized in this State, a marriage may exist only between one man and one woman.”

5. Conclusion.

We AFFIRM the board’s decision insofar as it denies death benefits to Harris.

Date: 28 June 2013 ALASKA WORKERS’ COMPENSATION APPEALS COMMISSION



Signed

James N. Rhodes, Appeals Commissioner

Signed

S. T. Hagedorn, Appeals Commissioner

Signed

Laurence Keyes, Chair

APPEAL PROCEDURES

This is a final decision on the merits of this appeal. The appeals commission affirms the board’s decision. The commission’s decision becomes effective when distributed (mailed) unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started).¹⁸ For the date of distribution, see the box below.

Effective, November 7, 2005, proceedings to appeal this decision must be instituted (started) in the Alaska Supreme Court no later than 30 days after the date this final

¹⁸ A party has 30 days after the distribution of a final decision of the commission to file an appeal to the supreme court. If the commission’s decision was distributed by mail only to a party, then three days are added to the 30 days, pursuant to Rule of Appellate Procedure 502(c), which states:

Additional Time After Service or Distribution by Mail.

Whenever a party has the right or is required to act within a prescribed number of days after the service or distribution of a document, and the document is served or distributed by mail, three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

decision is distributed¹⁹ and be brought by a party-in-interest against all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure. *See* AS 23.30.129(a). The appeals commission is not a party.

You may wish to consider consulting with legal counsel before filing an appeal. If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*.

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone: 907-264-0612

More information is available on the Alaska Court System's website:
<http://www.courts.alaska.gov/>

RECONSIDERATION

This is a decision issued under AS 23.30.128(e). A party may ask the commission to reconsider this final decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion for reconsideration must be filed with the commission no later than 30 days after the day this decision is distributed to the parties. If a request for reconsideration of this final decision is filed on time with the commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or, no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that this is a full and correct copy of the Final Decision No. 183 issued in the matter of *Deborah Harris, domestic partner of Kerry Fadely, deceased vs. Millennium Hotel and New Hampshire Insurance Co.*, AWCAC Appeal No. 13-005, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on June 28, 2013.

Date: July 2, 2013



Signed

K. Morrison, Deputy Commission Clerk

¹⁹ *See id.*