

On April 27, 2020, at the delegation of the Commissioner, Deputy Commissioner Christenson ordered defendants to show cause as to why portions of the hearing involving demeanor should be reheard. After responsive pleadings by the parties, Deputy Commissioner Christenson issued an Order for Rehearing on May 18, 2020, that remanded the case back to me to rehear the portions of the case involving demeanor.

The rehearing was conducted on July 20, 2020, by the undersigned via CourtCall. The only evidence introduced at rehearing was Roger's testimony. The evidentiary record closed and the rehearing was considered fully submitted upon the conclusion of Roger's testimony on July 20, 2020.

ISSUE

Whether Roger's testimony in the July 20, 2020 rehearing regarding demeanor impacted or changed the findings of fact or conclusions of law contained in the proposed August 6, 2019 arbitration decision.

FINDINGS OF FACT

On rehearing, Roger's testimony centered primarily on the reasons Heather initially left their home in Delhi, Iowa. He explained that Heather lost her job and relocated in an attempt to find work and he was required to do the same shortly thereafter because he was unable to maintain the house payments on his own. This is consistent with his earlier testimony and my finding in the arbitration decision that their separation in 2011 occurred for "mostly financial" reasons after Heather lost her job. (Arbitration Decision, page 2)

On cross-examination on rehearing, Roger acknowledged that he began a relationship with another woman, Angela Lee, sometime in 2011 or 2012. Again, this is consistent with his earlier testimony and my finding in the arbitration decision. (Arb. Dec., p. 3)

Also consistent with his earlier testimony and my finding in the arbitration decision was Roger's testimony on rehearing that he did not have documentation to corroborate whether he was Heather's beneficiary or whether she was his, nor did he have documentation proving whether Heather was listed as emergency contact or whether they spoke regularly. (Arb. Dec., p. 3)

Ultimately, given Roger's consistent testimony throughout the entirety of the case, I find Roger's behavior and outward manner to be forthcoming and straightforward. At no point on rehearing was I given the impression that he was attempting to conceal information. I therefore find him to be a generally credible witness and I find his demeanor reflects positively on his case.

These findings regarding claimant's demeanor, however, do nothing to change or impact my findings that Heather and Roger intended to terminate their marital relationship in early 2011 and that the cessation of the marriage was due to financial hardship and not any abhorrent behavior. As I explained in the arbitration decision:

[R]egardless of whether Heather was Roger's beneficiary or emergency contact or whether they spoke regularly around the time of her work-related injury, I find that both Heather and Roger intended to terminate their marital relationship in early 2011—nearly two years before claimant's work-related injury. Heather moved out of the home she shared with Roger, and shortly thereafter Roger began a relationship with another woman—a relationship that continued for the next five years and included several years of cohabitation. Roger's relationship with Ms. Lee reflects his willful intention to separate from Heather. Further, Heather and Roger never lived together or had any sexual relationship after their separation in 2011. While they may have spoken regularly at the time of claimant's work-related injury, these exchanges were not romantic; they were to check up on one another and their children. For these reasons, I find Heather and Roger ended their marriage relationship in 2011 and that Roger willfully and intentionally separated from Heather at that time.

I also find that the cessation of Heather and Roger's marriage relationship in 2011 came as a result of financial hardship; not due to any abhorrent behavior from Heather, such as alcoholism, drug use, or physical abuse.

(Arb. Dec., p. 3 (emphasis added)).

Roger's demeanor and credibility also do not change or impact my finding that the termination of Roger and Heather's marital relationship continued at the time of her death. As I explained in the arbitration decision:

While Roger may have assisted Heather financially after her work-related injury, he and Heather continued to live separately, Roger remained in a romantic relationship with Ms. Lee, Heather was in at least one romantic relationship with another individual, and Heather did not share her workers' compensation benefits with Roger or support him in any way. I further find that the continuation of their separation was not due to any abhorrent conduct by Heather.

(Arb. Dec., p. 5)

Again, Roger was forthcoming in the fact that he and Heather separated initially due to financial reasons, and he was likewise forthcoming about his relationship with

Ms. Lee. Thus, after considering claimant's positive demeanor and credibility, the above-stated findings are unchanged.

Because Roger's testimony on rehearing regarding demeanor does not impact or change my findings in the arbitration decision, the findings of fact in the arbitration decision are adopted in their entirety.

CONCLUSIONS OF LAW

I concluded in the arbitration that Roger willfully deserted Heather without fault by Heather as of 2011—before her underlying work-related injury. In other words, regardless of whether Heather's date of injury or date of death was used for the surviving spouse/willful desertion analysis, I concluded Roger willfully deserted Heather.

As I explained in the arbitration decision:

As noted by the court in James Black, “the act is willful when there is a design to forsake the other spouse . . . and thereby break up the marital union, deliberate intent to cease living with the other as spouse, abnegation of all duties of the marriage relations, the actual ceasing of cohabitation, and the intent to desert.” 173 N.W. at 25.

In this case, I found that Roger and Heather intended to terminate their marriage relationship in 2011. Roger was a willful and intentional participant in this decision, as both he and Heather moved out of their shared home and he initiated a romantic relationship with another woman just a few months after his separation from Heather. Considering the court's analysis in James Black, I conclude that there was a cessation of the marriage relations in 2011 and that Roger intended to—and willfully did, in fact—separate from Heather in 2011. See id.

The cessation of the marriage relations and Roger's intent to be separated from Heather continued through her date of death. Roger remained in a romantic relationship with another woman at the time of Heather's death, and Roger and Heather never resumed their marital relationship through cohabitation, sexual relationship, or any other means, after their initial separation. Thus, I conclude the first two elements of willful desertion are satisfied, regardless of whether Heather's date of death or the date of her underlying work-related injury is used. See James Black, 173 N.W. at 24-25.

I now turn to the final element, whether the desertion occurred “without fault of the deceased.” See Iowa Code § 85.42(1)(a). Per Roger's testimony, I found Heather and Roger's separation occurred largely because of financial strains. It was not the result of alcoholism,

drug use, abuse, or any other objectionable or dangerous behavior. See Flanders v. IBP, Inc., File No. 929926 (Arb. June 1995) (finding surviving spouse's willful desertion was the result of alcohol abuse and physical abuse, which amounted to fault). I therefore conclude Roger's willful desertion of Heather was without fault on behalf of Heather.

As such, I conclude defendants established that Roger had willfully deserted Heather both at the time of her underlying injury and her death, and that the desertion was without fault on Heather's behalf. Defendants, therefore, carried their burden to prove that there was a willful desertion under Iowa Code section 85.42(1)(a), meaning Roger shall not be considered as dependent in any degree for purposes of death benefits.

This result is consistent with the purpose of death benefits, which, as mentioned, is to "provide the beneficiaries of deceased workers with a substitute for the support that was previously provided by the decedent." 99 C.J.S. Workers' Compensation § 285 (2019). In other words, "[t]he purpose . . . is to protect and provide for "dependents who were wholly dependent on the earnings of the employee." Bertrand v. Sioux City Grain Exch., 419 N.W.2d 402, 404 (Iowa 1988). Thus, when a surviving spouse intends to end his or her marriage and acts willfully to execute that cessation, then the bond that served as the basis for the surviving spouse's right to a claim for death benefits is severed. See Thompson v. Lawson, 347 U.S. 334, 337 (Iowa 1954) ("Julia herself, by her purported remarriage, severed the bond which was the basis of her right to claim a death benefit.").

In this case, Roger's dependence on Heather's earnings ended when they separated in early 2011, nearly two years before her underlying work-related injury and nearly six years before her death. Heather occasionally gave Roger small amounts of money in an attempt to pay back money loaned to her, but this only happened a few times a year and in sums of less than \$30. Importantly, Heather also never shared her workers' compensation benefits with Roger. Roger simply was not dependent on Heather's earnings after 2011, nor was he dependent on Heather for a home, a car, or any other necessities or comforts. Roger's romantic relationship with another woman, with whom he lived for several years, combined with the absence of any dependence on Heather, severed the bond that was the basis of his claim for death benefits.

(Arb. Dec., pp. 9-11)

Ultimately, nothing about claimant's testimony on rehearing regarding demeanor impacted or changed any of the above-stated analysis or my conclusion that Roger willfully deserted Heather and is therefore not entitled to death benefits.

With the additional conclusions stated above, the conclusions of law in the arbitration decision are therefore adopted in their entirety.

ORDER

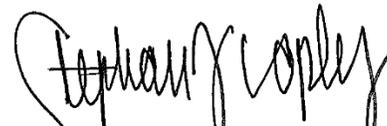
THEREFORE, IT IS ORDERED:

The arbitration decision on August 6, 2019 is adopted in its entirety with the above-stated additional findings of fact and conclusions of law.

Roger Blasdell, surviving spouse of Heather Blasdell, takes nothing.

All parties shall bear their own costs.

Signed and filed this 24th day of July, 2020.



STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas M. Wertz (via WCES)

Laura Ostrander (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.