

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JUAN CARLOS HERNANDEZ
GUADARRAMA,

Claimant,

v.

MARSING AGRICULTURAL LABOR
SPONSORING COMMITTEE INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,
Defendants/Petitioners.

IC # 2023-015697

**ORDER ON PETITION FOR
DECLARATORY RULING**

FILED

FEB 15 2024

INDUSTRIAL COMMISSION

This matter is before the Idaho Industrial Commission upon *Defendants' Petition for Declaratory Ruling on the Application of I.C. § 72-413*, filed under JRP 15 on December 27, 2023, with supporting memorandum and exhibits. The Claimant is deceased, and no response was filed. Defendants ask to whom death benefits owing to a minor dependent of a deceased worker under I.C. § 72-413 should be paid. The deceased was unmarried, the dependent child no longer lives with the natural mother, and custody of the child has not been awarded to the current caretaker by the court of any state. As explained *infra*, the Commission concludes that the benefits shall be paid to the caretaker, the child's grandfather. It is deemed necessary under I.C. § 72-413, and alternatively, sufficient evidence exists to find that the child's grandfather has been treated as an adoptive parent under I.C. § 72-102(9)(a).

FACTS

On June 9, 2023, Juan Carlos Hernandez Guadarrama (“Claimant”) was killed in a workplace accident in Shoshone, Idaho. At the time of his death, Claimant had a child living in Mexico (“Child”). Claimant's father and Child's grandfather, Gildardo Gonzalez Estrada (“Grandfather”), takes care of Child in Mexico. Claimant and Mother were minors at the time that Child was born. Ex. B. Claimant was not married to Child's mother at the time of his death, and Mother does not currently live with Child. On or about August 9, 2023, Mother signed a power of attorney granting Grandfather the power to “manage and carry out all the corresponding procedures for the child [name redacted], regarding [Child’s] support, being empowered to accept and/or award the place, if ever, sign and deliver the required documents for this purpose.” Ex. B.

Exhibits have been provided documenting a grandparent DNA test study that confirmed Child’s biological relationship with Grandfather to a probability of 96.67%. Ex. B. Otherwise, these facts are based on the proffer of Defendants, as supported by a sworn and attested statement provided by Grandfather and a copy of the power of attorney.

ARGUMENTS OF THE PARTIES

Defendants have filed this action for declaratory relief. Service has not been made on any representative of Claimant and no attorney has appeared on behalf of Claimant. Defendants advised the Commission that Claimant has no next of kin or personal representative in Idaho to serve, as Grandfather and Child live in Mexico. No response has been received.

ISSUES

1. Pursuant to I.C. § 72-413, to whom shall Defendants pay death benefits on behalf of a minor dependent where the minor does not live with the surviving natural parent and no legal custodian has been appointed by a court of competent jurisdiction of any state?

DISCUSSION

I. The Lack of Service Of The Petition Upon Claimant Does Not Render A Declaratory Ruling Improper, But The Resulting Ruling Will Not Be Binding Upon Unserved Parties.

Before reaching the merits of the Petition, there is a procedural question regarding the lack of service. No service of the petition for declaratory judgment has been made by Defendants on any representative of Claimant. JRP 15(D) requires that “[t]he petitioner shall serve a copy of the petition on all other persons to the actual controversy at the time the petition is filed with the Commission.” It also provides that “[a]ll persons so served shall be deemed parties to the declaratory ruling proceeding. A declaratory ruling shall not be binding on persons not made parties to the proceeding.” *Id.*

Here, no service has been made. The only identified reason for lack of service provided by Petitioner is the location of Grandfather and Child in Mexico. The fact that a party is located in another country does not in and of itself provide an exception to the requirements of service. JRP 15(D) still requires service on “persons to the actual controversy.”

It is Claimant’s child, as the minor dependent, who has Claimant’s interest in the current proceedings. This is per the arrangements of I.C. § 72-413 et. seq. and the definitions in I.C. § 72-102(11), which state that “[a]ny reference to an employee who has been injured shall, where the employee is dead, include a reference to his dependents.” Child must therefore be served. However, service cannot be made on minor Child directly. Therefore, service requires identifying the individual who ought to receive service on Child’s behalf. The JRP rules applicable to worker’s compensation cases do not direct how to serve a minor. Generally, service for a minor dependent is made upon the representative who filed the claim. Any such representative must be a legally qualified individual.

[T]he common law and the statutory scheme make it clear that the natural parent of

a minor child has the right to make all decisions concerning such child's care, custody and control. This necessarily includes the natural parent's right to pursue a claim on behalf of a minor child. [. . . A natural parent] is legally qualified to pursue the claim for death benefits on behalf of such child.

Schmitt v. Eagle Rock Timber, Inc., 080819 IDWC, IC 15000123 (Idaho Industrial Commission Decisions, 2019). Claims filed by guardians have also been accepted. *In re Wold*, 070710 IDWC, IC 2005-519684 (Idaho Industrial Commission Decisions, 2010). However, these cases do not explain who ought to be served when no person has undertaken to file on behalf of a minor, and Defendants have initiated the case in due diligence. As persuasive authority, the Idaho Rules of Civil Procedure would provide for service upon "any person having the care and custody of the minor" in this situation, as there is no appointed guardian, nor any parent or guardian "found within the state." I.R.C.P. (2)(A)(ii). Applying this rule would require Grandfather to be served. However, this rule has not been incorporated into worker's compensation law.

Given the lack of clarity, the question of who ought to receive service of documents on Child's behalf is asking practically the same question as the Petition, which asks who ought to receive payments on Child's behalf. Therefore, answering the question of who ought to be served as the "person[] to the actual controversy" is best solved by answering the Petition itself. The Commission will accordingly proceed to answer the Petition. However, per the restrictions of JRP 15, this decision is not binding on parties not served with the Petition.

II. Standards For Declaratory Judgment

Defendants have requested a declaratory ruling, which is proper as the issue presented satisfies the requirements of JRP 15(C).

A party may request a declaratory judgment to resolve a dispute with a written petition when there is "an actual controversy over the construction, validity or applicability of a statute, rule, or order." JRP 15C.

1. The petitioner must expressly seek a declaratory ruling and must identify the statute, rule, or order on which a ruling is requested and state the issue or issues to be decided;
2. The petitioner must allege that an actual controversy exists over the construction, validity or applicability of the statute, rule, or order and must state with specificity the nature of the controversy;
3. The petitioner must have an interest which is directly affected by the statute, rule, or order in which a ruling is requested and must plainly state that interest in the petition;

JRP 15C. A supporting memorandum must also be filed. "The Commission may hold a hearing on the petition, issue a written ruling providing guidance on the controversy or decline to make a ruling when it determines that there is no controversy or that the issue at hand is better suited through resolution in some other venue, or by some other administrative means." *Miller v. Yellowstone Plastics, Inc.*, 100722 IDWC, IC 2019-024650 (Idaho Industrial Commission Decisions, 2022).

Here, the elements to obtain a JRP 15(c) declaratory ruling have been satisfied. The issue under I.C. § 72-413 has clearly been identified, the language of I.C. § 72-413 is the source of the dispute, and Defendants have a direct interest in the resolution of this question as it will determine to whom benefits are paid.

III. Manner of Payment For Benefits Owed to Minor Child Pursuant to I.C. § 72-413.

Proceeding to the substance of the Petition, the question presented strictly regards the correct manner of payments for the benefits owed to Child pursuant to I.C. § 72-413(3). Defendants do not contest liability. The statute directs that where benefits are owing:

Payments made for and on behalf of a dependent child or children shall be made to such child's or children's natural or adoptive surviving parent for the use and benefit of the child or children, if such child or children reside with such parent, notwithstanding the remarriage of such parent; provided, however, if the care and the custody of such child or children has been awarded by a court of

competent jurisdiction of this state or any other state to a person or persons other than the child's or children's natural or adoptive parent, then such payments shall be made to that person or those persons so awarded care and custody for the use and benefit of the child or children. Whenever the commission deems it necessary, it may direct any payments made hereunder to be made under such terms and conditions as it deems necessary.

I.C. § 72-413. Here however, Child does not reside with Mother, the natural parent, but with Grandfather. Grandfather meanwhile, has not been awarded care and custody by a "court of competent jurisdiction of this state or any other state."¹ Consequently, Defendants ask to whom they should make payments on Child's behalf. As discussed below, the Commission finds Defendants shall send the payments to Grandfather on Child's behalf. This finding may be supported on either of two independent grounds.

A. Under the Catch All Provision In This Case, The Commission Finds It Necessary to Make Payments to Grandfather

The Commission is authorized, whenever it "deems it necessary," to "direct any payments made hereunder to be made under such terms and conditions as it deems necessary." I.C. § 72-413. In the facts of this case, only Grandfather and Mother are known as having any connection to Child. Of these two, only Grandfather is in a practical position to receive payments on Child's behalf. Payments made to Mother are not appropriate as the statute requires a natural parent to live with the child. Perhaps even more problematic is the fact that there is no evidence Mother actually has contact with or would take responsibility for Child. In contrast, Grandfather has been given power of attorney by Mother, and has the daily care of Child. Therefore, Grandfather is the best person to receive and utilize the payments on Child's behalf. The Commission deems it necessary and directs that payments on Child's behalf be made to Grandfather.

¹ Even if a court in Mexico were to award custody, such court is not of "any other state." A state is defined only to include a "state, district, commonwealth, zone or territory of the United States or any province of Canada." Idaho Code § 72-109(28).

B. Payment Shall Be Made To Grandfather As An Adoptive Parent

Grandfather qualifies as an adoptive parent under the Worker's Compensation Act. As an adoptive parent living with Child, he is qualified to receive payments on Child's behalf.

Under I.C. § 72-102(9), the word "[c]hild" includes adopted children, posthumous children, and acknowledged illegitimate children, but does not include stepchildren unless actually dependent." *Id.* at (9)(c). The words "[a]dopted" and "adoption" include cases where persons are treated as adopted as well as those of legal adoption unless legal adoption is specifically provided." *Id.* at (9)(a).

Per these definitions, the Industrial Commission finds that benefits owed to a minor dependent may be paid to a caretaker where the child has "been treated as adopted" and the manner of payment directed in I.C. § 72-413 is otherwise inapplicable.

The phrase "treated as adopted" is unique in Idaho statutes and no known decision has authoritatively applied it. The interpretation of a statute "must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole." *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (Idaho 2011). To break down the phrase into its ordinary meaning, "treated" is defined as to "behave toward or deal with in a certain way" or "to behave towards someone or deal with something in a particular way." *Treated*, OXFORD LANGUAGES (online edition, last accessed January 17, 2023). Adopt means "legally take (another's child) and bring it up as one's own." *Adopt*, OXFORD LANGUAGES (online edition, last accessed January 17, 2023). In another dictionary, adopt is defined as "to take (someone or something) by choice into a relationship" or "to take (a child born to other parents) voluntarily as one's own child especially in compliance with formal legal procedures." *Adopt*, MERRIAM-WEBSTER DICTIONARY (online edition, last accessed January 17, 2023). A third definition is "to legally take another person's child into your

own family and take care of him or her as your own child.” *Adopt*, CAMBRIDGE DICTIONARY (online edition, last accessed January 17, 2023).² Combining these definitions, to treat a child as adopted is to take and care for someone else’s child as if the child was one’s own, in a voluntary manner which is not illegal, but where no formal legal adoption has occurred.

This definition is consistent with the only known use of the phrase “treated as adopted,” which occurred in a dissent from Justice Bistline in *Case of Graham*, 103 Idaho 824, 654 P.2d 1377 (1982). There, the majority of the Court analyzed whether a mother’s claim for death benefits was supported by the existence of a common law marriage. *Id.* at 826-27, 1379-80. The Court affirmed the finding that mother did not have a common law marriage, as there was evidence she had not agreed to being held out as married. *Id.* In the dissent, Justice Bistline disagreed with the Court’s interpretation of common law marriage. In addition, he directly brought up the possibility of the children’s benefits. The “minor claimants [are] entitled to separate consideration . . . These children, although not the biological children of Graham in fact lived with him and were dependent upon him for food, clothing and shelter.” *Id.* at 831, 1385 (Bistline, J. dissenting). He concluded that “Worker’s Compensation Laws provide compensation for ‘those persons treated as adopted’” and “it is incumbent upon the Court to protect [the rights of children].” *Id.* at 831-32, 1384-85.

Applying the definition, Grandfather qualifies as an adoptive parent. He has been given physical custody of the child by Mother, who no longer lives with the child. Mother was a minor at the time of Child’s birth, and does not appear to have any active role in Child’s upbringing. Grandfather is Child’s biological paternal grandfather. He cares for Child and has been given legal

² Notably, Black’s Law Dictionary does not include a definition of the word “adopt.” It does define adoption, but builds that concept from the premise of the “creation of a parent-child relationship by judicial order...” *Adoption*, BLACK’S LAW DICTIONARY (9th Edition, 2004). Black cites authority that “adoption is entirely a creature of statute.” *Id.* Here however, the statutory phrase at issue - “treated as adopted” - expressly excludes the requirement of a legal adoption. Therefore, rather than using the legal definition of adoption as found in Black’s Law Dictionary, using the ordinary meaning of the terms of the statute is the more accurate approach to interpreting this phrase.

authority to make decisions on Child's behalf. Under these facts, Grandfather treats Child as adopted, and he may be treated as an adoptive parent under I.C. §§ 72-102(9)(a) and 72-431. Therefore, payments made for and on behalf of a dependent child shall be made to such child's "adoptive surviving parent" (i.e. Grandfather) for the "use and benefit" of Child. I.C. § 72-431.

ORDER

Based on the foregoing the Commission rules as follows:

1. The Commission has authority to direct that payment be made under conditions it deems necessary. It is necessary in this case to make such payments to Grandfather.

2. Benefits owed to a minor dependent pursuant to I.C. § 72-413 may be paid to a caretaker where the manner of payment directed in I.C. § 72-413 is otherwise inapplicable and the child has "been treated as adopted." The facts presented to the Commission support a finding that Child has been treated as adopted by Grandfather. Child's biological grandfather has been given power of attorney over Child, neither natural parent lives with Child, and Child lives with Grandfather under his care.

3. The Commission directs Defendants to make death benefit payments to Grandfather, Gildardo Gonzalez Estrada, for the use and benefit of Child.

4. In future matters, service on Child shall be accomplished by serving Grandfather, Gildardo Gonzalez Estrada.

DATED this 14th day of February, 2024.

INDUSTRIAL COMMISSION


Thomas E. Limbaugh, Chairman



Claire Sharp
Claire E. Sharp, Commissioner

Aaron White
Aaron White, Commissioner

ATTEST:

Kameron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of February, 2024 a true and correct copy of the foregoing **ORDER ON PETITION FOR DECLARATORY RULING** was served by email upon each of the following:

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