

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**KRISTA HORVATH FOR  
TARA O'SULLIVAN (Deceased), DEATH  
WITHOUT DEPENDENTS, *Applicant***

**vs.**

**CITY OF SACRAMENTO, *Defendant***

**Adjudication Number: ADJ12601349  
Sacramento District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

When an employee dies from an industrial injury, the employer is liable to pay a death benefit to the dependents of the employee. (Lab. Code, §§ 3600, 4701(b).) Dependency is determined as of the time of injury, and may be found to be total or partial, depending on the facts established. "Dependency may be defined as reliance upon another person for support. Total dependents are those who at the time of injury are solely supported by the decedent, or who have a legal right to look to him for their entire support. ... Partial dependents are those who at the time of injury have means of support other than the deceased's contributions ... ." (*Mendoza v. Workers' Comp. Appeals Bd.* (1976) 54 Cal.App.3d 820 [41 Cal.Comp.Cases 71].)

For the reasons stated by the WCJ in the report, we agree that applicant established partial dependency.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**August 9, 2021**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**KRISTA HORVATH  
MASTAGNI HOLSTEDT  
OFFICE OF THE DIRECTOR-DEATH WITHOUT DEPENDENTS LEGAL UNIT  
TWOHY, DARNEILLE & FRYE**

**PAG/abs**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

## **REPORT AND RECOMMENDATION ON PETITIO FOR RECONSIDERATION**

Applicant, Death Without Dependents Unit (DWD), filed a timely and very well-drafted Petition for Reconsideration from the Findings and Order issued on May 18 2021, which found that competing applicant, Krista Horvath was a partial dependent of deceased employee Tara O'Sullivan, and dismissed the claim of Death Without Dependents.

DWD alleges that the court erred because Ms. Horvath failed to produce evidence of actual payments of support prior to Ms. O'Sullivan's death.

Having thoroughly reviewed the contents of the Board's file and the Petition for Reconsideration, I respectfully recommend that DWD s Petition for Reconsideration be DENIED.

### **FACTUAL AND PROCEDURAL BACKGROUND**

This matter proceeded to trial solely upon the issue of the claimed partial dependency of applicant, Krista Horvath. (Minutes of Hearing and Summary of Evidence (MOH), April 29, 2021, pp. 2-3.) The tragic facts of this case are not in dispute. Decedent Tara O'Sullivan, worked as a police officer for the City of Sacramento when she died from a gunshot wound on June 19, 2019. (*Id.* At p. 2, lines 15-20.)

Ms. Horvath and Ms. O'Sullivan were sisters.

The recitation of facts in the petition of reconsideration is entirely correct. Just prior to her death, decedent and Ms. Horvath agreed to move in together with Ms. Horvath's fiancé. This would allow Ms. Horvath to save money for her planned wedding. They had signed a lease and intended to split the utility bills in half. (Joint Exhibit 101, p. 42, p. 15, lines 9-10.) The evidence clearly shows these facts to be true. The sole dispute is the application of the law to the facts of this case.

### **DISCUSSION**

To prove partial dependency, it is sufficient to show that the claimants looked to the deceased's contributions to maintain his or her accustomed mode of living and that the same living standard can no longer be maintained. (*Atlantic Rielldfield Co. v. WCAB (Arvisu)* (1982) (42 Cal.Comp.Cases 369) The contribution must be made in goods or money, and the value of services is not considered. (*Great W. Power Co. v. IAC (Savercool)* (1923) 192 Cal. 724.)

Death Without Dependents primarily argued at trial that applicant would merely have been a roommate of decedent and that sharing the bills as part of a family pot is insufficient to establish dependency. While this is true, the facts establish that decedent intended to take on a greater share of the family pot so that applicant could save for her wedding.

If only applicant and decedent lived together, the splitting of rent and utilities would likely be insufficient to establish dependency as it is a true family pot with equal expenses split. However,

here, three people were to occupy the apartment, not two. Decedent agreed, in effect, to subsidize applicant's rent and utilities. That agreement is sufficient to establish a partial dependency where the applicant is decedent's sister.

The petition for reconsideration focuses on the undisputed facts that this was a promise for support prior to decedent's passing and that no actual support occurred prior to death. On this point, I respectfully disagree with the argument proffered by DWD as being too narrow. The full quote from the court in *Wings West Airlines* is as follows: "A mere promise of future support is not, as a rule, a basis for a dependency finding, except where circumstances indicate a bona fide assumption of responsibility for support without opportunity to make contributions prior to the injury." (*Wings West Airlines v. Workers' Comp. Appeals Bd.* (1986) 187 Cal. App. 3d 1047, 1052.)

I agree with DWD to the extent that if Ms. Horvath and Ms. O'Sullivan were merely discussing the possibility of moving in together, there would not be dependency. If it were merely a general promise to support the bills, with nothing further, I would not find dependency. The significant fact here is that they signed a lease together prior to Ms. O'Sullivan's death. By signing a lease contract, there was a bona fide assumption of responsibility for support, which occurred prior to death. The only reason that Ms. O'Sullivan did not make payments prior to her death was lack of opportunity.

For these reasons, I continue to find that Ms. Horvath is a partial dependent and that she is entitled to benefits per statute, which was deferred to the parties to adjust. I respectfully recommend that the petition for reconsideration be denied.

DATE: 6/9/2021

**Eric Ledger**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE