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DECEASED WORKMAN WHO DIED, RESULT OF INJURY RECEIVED IN COURSE OF AND ARISING OUT OF EMPLOYMENT—PERSONS PRESUMED TO BE WHOLLY DEPENDENT —ENTITLED TO MINIMUM AGGREGATE SUM OF $2,000.00, DEATH BENEFITS—DECEDENT TOTALLY DISABLED FROM INJURY FOR TWO YEARS IMMEDIATELY PRECEDING DEATH—SECTION 1465-82 G. C., EFFECTIVE SEPTEMBER 12, 1947.

SYLLABUS:

Under the provisions of Section 1465-82, General Code, as amended effective September 12, 1947, persons presumed to be wholly dependent upon a deceased workman who has died as the result of an injury received in the course of and arising out of his employment are entitled to the minimum aggregate sum of $2,000.00 as death benefits in all cases in which the decedent has been totally disabled from the injury for the period of two years immediately preceding his death, where such death occurs subsequent to September 12, 1947.

Columbus, Ohio, July 19, 1948

The Industrial Commission of Ohio
Columbus, Ohio

Gentlemen:

Your request for my opinion is as follows:

"Section 1465-82 as amended, effective September 12, 1947, provides as follows:

'In case the injury causes death within the period of two years, and in cases in which compensation or disability on account of the injury has been continuous to the time

of the death of the injured person and the death is the result of such original injury, the benefits shall be in the amount and to the persons following:

'1. If there be no dependents, the disbursements from the state insurance fund shall be limited to the expenses provided for in section 1465-89 hereof.

'2. If there are wholly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent of the average weekly wages, not to exceed twenty-five dollars per week in any case, and to continue for the remainder of the period between the date of the death and eight years after the date of the injury, and not to amount to less than a minimum of two thousand dollars or more than a maximum of seven thousand five hundred dollars, including the compensation paid to the deceased employee prior to his death and benefits paid to the beneficiaries after death; provided, however, that if any person or persons who are presumed to be wholly dependent shall be entitled to receive less than the aggregate sum of two thousand dollars *under the foregoing provisions* and if the decedent was totally disabled as a result of the injury for the period of two years immediately preceding his death, then such person or persons shall receive weekly benefits at the rate of sixty-six and two-thirds per cent of the average weekly wages, not to exceed twenty-five dollars per week until such person or persons have received the aggregate of two thousand dollars under this paragraph 2.'

"The question which has been presented in many claims before the Commission and which is now raised particularly by an employer in a claim which is presently pending before the Commission is whether, under the recent amendment which was effective September 18, 1947, the Industrial Commission may make an award of $2,000.00 when death occurs more than eight years following the date of injury, even though the other conditions for such an award are present. In other words, in a case in which there is a wholly dependent widow and in which the decedent had been totally disabled as a result of the injury and for a period of two years or more immediately preceding his death, and where the death occurred more than eight years following the injury, shall such widow receive death benefits until an aggregate amount of $2,000.00 has been paid?

"This situation arises frequently in cases where the Commission has awarded compensation on a permanent and total basis for many years. Of course, the case arises only where the death claim originates after September 12, 1947."

In paragraph 2 of Section 1465-82, General Code, hereinabove quoted, the following language is new, having been added by the recent amendment thereto:

> "provided, however, that if any person or persons who are presumed to be wholly dependent shall be entitled to receive less than the aggregate sum of two thousand dollars under the foregoing provisions and if the decedent was totally disabled as a result of the injury for the period of two years immediately preceeding his death, then such person or persons shall receive weekly benefits at the rate of sixty-six and two-thirds per cent of the average weekly wages, not to exceed twenty-five dollars per week until such person or persons have received the aggregate of two thousand dollars under this paragraph 2."

For convenience in illustrating the problems which arise in the administration of said statute as amended I shall present a series of supposititious cases, together with a discussion of the operation of the law prior to the insertion of the above quoted new matter, as follows:

(1) A is injured in the course of his employment on January 1, 1940; he is continuously and totally disabled as a result of such injury and dies as a direct result thereof on January 1, 1946; compensation accrues due to his wage classification at the rate of $1,000.00 per year; the maximum death benefits for his wage classification are $6,500.00.

In this illustration it is seen that A has received $6,000.00 in compensation during his life time following the injury. Thus the question arises as to what amount his dependents should be paid upon his death. The Supreme Court has considered this question in the case of State, ex rel. Nelson v. Industrial Commission, 133 O. S., 548, decided May 4, 1938, and held that payments made to the decedent during his life time should be deducted from the award payable to the widow in accordance with the wage classification of the decedent under the provisions of Section 1465-82, General Code. Thus, under the provisions of Section 1465-82, General Code, prior to the recent amendment, A's dependents would receive $500.00, being the maximum award of $6,500.00 less $6,000.00 which amount was paid to the decedent during his life time.

(2) B is injured in the course of his employment on January 1, 1940; the facts and conditions with respect to B's injury and condition are precisely the same as in illustration (1) above with respect to A, except that B lives six months longer than A, thus drawing the entire

$6,500.00 which is the maximum amount payable for the death of an employee in the wage classification of B. The logical application of the decision of the Supreme Court in the case of State, ex rel. Nelson v. Industrial Commission, supra, is that the dependents of B receive nothing on account of his death.

(3) C is injured in the course of his employment on January 1, 1937; has a period of temporary total disability extending to January 1, 1938; as a result of the injury of January 1, 1937, C again becomes totally disabled on December 31, 1944; his compensation accrues at the rate of $950.00 per year; C dies on January 1, 1947, and because of his wage classification maximum death benefits payable, if any, would be $6,500.00. Thus, C has been totally disabled as a result of his injury for more than two years immediately preceding his death, has drawn compensation approximating $2,350.00; however, the death of C occurs more than eight years after the date of the injury and under the provisions of Section 1465-82, General Code, prior to its recent amendment, irrespective of considerations of causation, the dependents of C would be entitled to no death benefits on account of his death.

We come now to a consideration of the effect of the amendment to Section 1465-82, General Code, hereinbefore quoted, and for convenience again consider the administration of such statute with respect to the foregoing series of supposititious cases. Let us assume with respect to such cases the same facts as hereinbefore set forth except that the dates set forth are altered so that the death of the decedent in each such case occurs after September 12, 1947, the effective datt of Section 1465-82, General Code, as it is now in force.

In illustration (1) hereinabove, it appears obvious that persons presumed to be wholly dependent upon A, being entitled to receive a sum less than $2,000.00 on account of the death of A, are, by virtue of the added language in the statute entitled to receive an aggregate sum of $2,000.00 in payments not to exceed $25.00 per week.

Likewise, in illustration (2) hereinabove, persons presumed to be wholly dependent upon B, being entitled under the former provisions of Section 1465-82, General Code, to receive nothing, are apparently entitled to receive an aggregate sum of $2,000.00 under favor of the added language to Section 1468-82, General Code.

In illustration (3) hereinabove, a different problem presents itself. By the express terms of former Section 1465-82, General Code, no death benefits are payable to dependents of a deceased workman unless the death of such workman occurs within eight years after an injury received in the course of and arising out of his employment, and which injury was causally connected with the death. It becomes necessary, therefore, to determine whether the eight year limitation is rendered nugatory by the language of the recent amendment to Section 1465-82, General Code.

At the outset, in any problem of statutory construction it is important, so far as possible, to give effect to all of the terms and provisions of the statute construed. See Sutherland on Statutory Construction (3rd Ed.), Section 1934. However, it may be that the provisions of the statute may be irreconcilable one with the other and in such event further principles of statutory construction must be applied.

It is manifest that if, under the provisions of Section 1465-82, General Code, as now in force, every person or group of persons presumed to be wholly dependent upon a decedent who for two years immediately preceding his death was totally disabled as a result of his injury is to be entitled to an aggregate sum of $2,000.00 irrespective of the fact that he or they shall be entitled to receive less than such sum under the former provisions of Section 1465-82, such result is inconsistent with an effective eight year limitation such as that expressed in the portion of Section 1465-82, General Code, effective prior to the recent amendment.

If the General Assembly had intended to exempt from the operation of the amendatory language those cases in which more than eight years had elapsed between the injury and the date of death of the decedent such intent could have been expressed by clear and unequivocal language. No such exemption from the operation of the amendatory language appears. We, therefore, must conclude that the amendatory language is inconsistent with the former provisions of Section 1465-82, General Code, to the extent that such former provision prevents the payment of any benefits to persons presumed to be wholly dependent upon a decedent who lived more than eight years beyond the date of the injury which caused his death. Such inconsistency must be resolved to afford proper administration of the statute.

It is said in Sutherland on Statutory Construction (3rd Ed.), Section 1934 as follows:

"In accordance with the general rule of construction that a statute should be read as a whole, as to future transactions the provisions introduced by the amendatory act should be read together with the provisions of the original section that were re-enacted in the amendatory act or left unchanged thereby, as if they had been originally enacted as one section. Effect is to be given to each part, and they are to be interpreted so that they do not conflict. *If the new provisions and the re-enacted or unchanged portions of the original section cannot be harmonized, the new provisions should prevail as the latest declaration of the legislative will.* In the absence of express evidence to the contrary, the new provisions are applicable only to the unchanged portions of the original section, and have the same scope."

(Emphasis supplied.)

It is thus clear that the amendatory language now contained in Section 1465-82, General Code, being the last expression of the legislative will, must prevail over the former inconsistent language in said section, and it is, therefore, my opinion that, irrespective of the lapse of more than eight years between the date of the injury received in the course of and arising out of the employment and the date of the death of a decedent who, as a result of such injury, has been totally disabled for two years immediately preceding his death, persons presumed to be wholly dependent upon such decedent are entitled to a minimum aggregate sum of $2,000.00 by virtue of Section 1465-82, General Code, as now in force. Of course, the eight year limitation expressed in Section 1465-82, General Code, is changed by a recent amendment only in so far as it would affect the right of persons presumed to be wholly dependent upon a decedent to receive the minimum aggregate sum of $2,000.00 as provided by the amendatory language therein.

Respectfully,

HUGH S. JENKINS,
Attorney General.