
IN THE SUPREME COURT FOR THE STATE OF IOWA
No. 21-1968

**LINNHAVEN, INC., and ACCIDENT FUND NATIONAL
INSURANCE COMPANY/UNITED HEARTLAND,
Petitioners-Appellants,**

vs.

**ROGER BLASDELL, SURVIVING
SPOUSE OF HEATHER BLASDELL,
Respondent-Appellee.**

**APPEAL FROM THE COURT OF APPEALS OF IOWA
NO. 21-1968**

APPELLANTS' APPLICATION FOR FURTHER REVIEW

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Iowa Court of Appeals entered a decision that was in conflict with James Black Dry Goods Co. v. Iowa Industrial Com'r, 186 Iowa 657, 173 N.W. 23 (1919). Iowa R. of App. Pro. 6.113(1)(b)(1)
2. Whether the Iowa Court of Appeals erred in finding the appellee did not abandon his spouse because the legal principles of spousal abandonment have changed since the James Black case was issued during a time where at fault divorce was the legal standard in Iowa. Iowa R. of App. Pro. 6.113(1)(b)(3)

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STATEMENT SUPPORTING FURTHER REVIEW

The Appellants assert the Iowa Court of Appeals entered a decision that was in conflict with James Black Dry Goods Co. v. Iowa Industrial Com'r, 186 Iowa 657, 173 N.W. 23 (1919), pursuant to Iowa Rule of Appellate Procedure 6.113(1)(b)(1). The Appellants maintain the Claimant's extensive contact with his spouse supported a finding of no spousal abandonment in James Black in contrast with the Claimant's minimal contact with her estranged spouse in the current case that supported an affirmative finding of spousal abandonment. The Appellants also assert the Iowa Court of Appeals erred in finding the Appellee did not abandon his spouse because the legal principles of spousal

abandonment have changed since the James Black case was issued during a time where at fault divorce was the legal standard in Iowa pursuant to Iowa Rule of Appellate Procedure 6.113(1)(b)(3).

I. TABLE OF AUTHORITIES

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II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Standard of Review.

- Iowa Code § 17A.19
- 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995)
- Evenson v. Winnebago Indus., Inc., 881 N.W.2d 360 (Iowa 2016)
- Gits Mfg. Co. v. Frank, 855 N.W.2d 195 (Iowa 2014)
- Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296 (Iowa 1974)
- IBP, Inc. v. Burress, 779 N.W.2d 210 (Iowa 2010)
- Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000)
- Lithcote Co. v. Ballenger, 471 N.W.2d 64 (Iowa App. 1991)

Meyer v. IBP, Inc., 710 N.W.2d 213 (Iowa 2006)
Midwest Ambulance Serv. v. Ruud, 754 N.W.2d 860 (Iowa 2008)
Mike Brooks, Inc. v. House, 843 N.W.2d 885 (Iowa 2014)
Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998)

B. The Supreme Court Should Reverse Court of Appeals Decision that Affirmed the District Court Order that Found Roger Blasdell did not Abandon Heather Blasdell.

Iowa Code § 84.42
Iowa Code § 85.16
Iowa Code § 85.31
James Black Dry Goods Co. v. Iowa Industrial Com'r, 186 Iowa 657, 173 N.W. 23 (1919)

III. BRIEF – STATEMENT OF THE CASE

Roger Blasdell filed a Petition alleging he should be permitted to collect death benefits following the death of his estranged legal spouse, Heather Blasdell. Petition, p. 1; App. p. 25. Linnhaven, Inc., denied liability, citing the affirmative defenses that Ms. Blasdell’s death was the result of intentional injury and that Mr. Blasdell had willfully abandoned Ms. Blasdell prior to the work-related injury. Answer, p. 2; App. p. 28. The case proceeded to Arbitration Hearing on May 15, 2018, before Deputy Workers’ Compensation Commission Erica Fitch. Hearing Report, p. 2; App. p. 31. The issues presented to the Agency at hearing were as follows:

1. Whether Roger Blasdell was barred from receiving death benefits based upon the doctrine of spousal abandonment pursuant to Iowa Code section 84.42(1)(a).

2. Whether Roger Blasdell was barred from receiving death benefits based upon the Claimant's intentional suicide and the affirmative defense of intentional injury pursuant to Iowa Code section 85.16(1).

3. Whether the Agency should adopt the rate calculated by the Defendants or the rate calculated by the Claimant.

On July 12, 2019, Commissioner Joseph Cortese II filed an Order of Delegation of Authority stating as follows: "Pursuant to Iowa Code section 17A.15(2) the authority for issuing a proposed decision in this matter will be assigned to Deputy Workers' Compensation Commission Stephanie J. Copley due to the present unavailability of Deputy Workers' Compensation Commissioner Erica J. Fitch." Order of Delegation of Authority, p. 1; App. p. 226. Claimant's Counsel filed no objection to the Order of Delegation of Authority. Claimant's Counsel filed no appeal from the Order of Delegation of Authority. Finally, Claimant's Counsel did not submit an Amended Post-Hearing Brief objecting to the Order of Delegation of Authority. On August 6, 2019, Deputy Copley issued an Arbitration Decision finding Mr. Blasdell "willfully deserted Heather [Blasdell] and therefore is not entitled to death benefits." Arb. Dec., p. 11; App. p. 238. Deputy Copley issued a Rehearing Decision addressing the Claimant's demeanor on July 24, 2020. Rehearing Dec., p. 1; App. p. 263. The Claimant subsequently filed a Notice of Appeal

to the Commissioner. Notice of Appeal, p. 1; App. p. 269. Claimant's Counsel's Appeal Brief contained the first objection to the Order of Delegation of Authority. Claimant's Agency Appeal Brief, p. 3.

On June 8, 2021, Commissioner Cortese issued an Appeal Decision finding that the Claimant waived any argument that the demeanor hearing was an inadequate remedy. App. Dec., p. 4; App. p. 274. Commissioner Cortese also found the Claimant "did not object to the demeanor hearing[,]" and he "did not argue, at the July 20, 2020 hearing, that the demeanor hearing was an inadequate remedy." App. Dec., p. 4; App. p. 274. The Commissioner found that the doctrines of judicial estoppel and res judicata did not bar the Defendants from raising the issue of Mr. Blasdell's marital status as an issue in the case. App. Dec., p. 5; App. p. 275. The Commissioner also concluded Mr. Blasdell willfully deserted Ms. Blasdell prior to the work injury, so he was not entitled to collect her permanent total disability benefits. App. Dec., p. 7; App. p. 277.

The Claimant filed a Petition for Judicial Review on July 8, 2021. Petition for Judicial Review, p. 1; App. p. 279. The Defendants timely filed an Answer to the Petition for Judicial Review on July 16, 2021. Answer to Petition for Judicial Review, p. 1; App. p. 291. On December 6, 2021, District Judge Celene Gogerty issued a Ruling on Petitioner's Application

for Judicial Review. Ruling on Petition for Judicial Review, p. 1; App. p. 293. Judge Gogerty found Mr. Blasdell was not prejudiced by the delegation of authority to another Deputy to issue the Arbitration Decision. Ruling on Petition for Judicial Review, p. 5; App. p. 297. The judge also found that the “findings d[id] not support the contention that [the] Claimant abandoned Heather.” Ruling on Petition for Judicial Review, p. 7; App. p. 299. Judge Gogerty then remanded the case to the Commissioner to determine whether Ms. Blasdell’s suicide precluded the award of her workers’ compensation benefits to her estranged spouse. Ruling on Petition for Judicial Review, p. 8; App. p. 300.

On July 20, 2022, the Iowa Court of Appeals issued an Appeal Decision affirming the District Court. Appeal Decision, p. 12. The Iowa Court of Appeals found the “[C]ommissioner’s decision that Roger deserted Heather without the fault of Heather was not supported by substantial evidence within the meaning of Iowa Code section 85.42(1)(a).” Appeal Decision, p. 12.

IV. STATEMENT OF THE FACTS

Heather Blasdell filed a Petition in Arbitration demanding workers’ compensation benefits from Linnhaven, Inc., because of an injury to the right foot, back, body as a whole, and a mental injury on November 5, 2012.

Arb. Dec. pp. 1 – 2; App. pp. 4 – 5. The claim proceeded to hearing on October 7, 2014, and Deputy Workers' Compensation Commissioner Erin Pals awarded permanent total disability benefits. Arb. Dec. pp. 1, 15; App. pp. 4, 18. The Defendants timely filed an appeal. Notice of Appeal, p. 1. An appeal decision was issued on May 20, 2016, that affirmed the award of permanent total disability. Appeal Decision, p. 1; App. p. 24. At the Arbitration Hearing, Deputy Pals considered only the following issues:

1. Whether the injury was the cause of any temporary disability, including temporary total disability benefits, from September 27, 2013, to October 2, 2014.

2. What, if any, permanent disability the Claimant sustained as a result of the November 5, 2012, injury.

3. Whether the Claimant was entitled to payment of past medical expenses.

4. Whether the Claimant was entitled to penalty benefits.

5. Whether the Claimant was entitled to costs.

Arb. Dec. pp. 1 – 2; App. pp. 4 – 5. The Deputy could not issue any decision regarding the affirmative defense of intentional injury because Ms. Blasdell was alive at the time of hearing; this affirmative defense was not

applicable until her death by intentional suicide on September 9, 2016. Arb. Dec. pp. 1 – 15; Ex. JE2, p. 1; App. pp. 4 – 19; 50.

The Manchester Police Department was called to Ms. Blasdell's residence on September 9, 2016, for a report that she was cold, had no pulse, and was not breathing. Ex. JE2, p. 1; App. p. 50. The officer who arrived at Ms. Blasdell's property was met by Steven Kephart, who was a neighbor to Ms. Blasdell, and Austen Burrridge. Ex. JE2, p. 3; App. p. 52. Mr. Kephart informed the responding officer that Ms. Blasdell "was dead." Ex. JE2, p. 3; App. p. 52. The officer noted Ms. Blasdell had no signs of life, and rigor mortis had set in. Ex. JE2, p. 3; App. p. 52.

Both Mr. Kephart and Mr. Burrridge stated Ms. Blasdell "has had suicide attempts in the past and was recently hospitalized for an attempt." Ex. JE2, p. 3; App. p. 52. They also stated, "Heather and her boyfriend had recently broken up a day or a couple of days prior." Ex. JE2, p. 3; App. p. 52. The officer located a lockbox in the bedroom of Ms. Blasdell's residence and noted there were approximately 10 – 15 pill bottles inside, and "[s]everal of these pill bottles didn't have any medications in them even though they were prescribed only a couple of days earlier." Ex. JE2, p. 4; App. p. 53. The responding officer also found a handwritten suicide note from Ms. Blasdell. Ex. JE2, p. 4; App. p. 53. Ms. Blasdell's suicide note

did not reference Roger Blasdell in any manner. Ex. JE2, p. 5; App. p. 54. Instead, Ms. Blasdell asked Mr. Kephart in the suicide note to take care of her “fur babies.” Ex. JE2, p. 4; Ex. JE2, p. 5; App. pp. 54 – 55. The responding officer concluded in his report that Ms. Blasdell “either had an accidental overdose on 2 different types of medications or a successful suicide attempt with these 2 different types of medications.” Ex. JE2, p. 4; App. p. 4.

An autopsy was performed by Dr. Dennis Klein on September 10, 2016. Ex. JE1, pp. 1 – 2; App. pp. 36 – 37. Dr. Klein concluded the cause of death was “[m]ixed drug (quetiapine and zolpidem) intoxication.” Ex. JE2, p. 2; App. p. 51. Dr. Klein observed that according to investigative reports, the “decedent had a past medical history of depression, low back pain, and suicide attempts by overdose of medications.” Ex. JE1, p. 6; App. p. 41. Dr. Klein also observed that “an unsigned, undated suicide note was found with some papers on the decedent’s bed.” Ex. JE1, p. 6; App. p. 41.

Following the Claimant’s suicide, the Defendants engaged the services of a private investigator to determine whether Roger Blasdell had abandoned Heather Blasdell both at the time of the alleged injury on November 5, 2012, and at the time Ms. Blasdell committed suicide on September 9, 2016. Ex. JE3, p. 5; App. p. 61. The investigator spoke with

Angela Lee, a former girlfriend of Mr. Blasdell, on November 27, 2017, and she stated, “she broke up with Roger Blasdell in March 2017, after a 6-year relationship.” Ex. JE3, p. 5; App. p. 61. Therefore, Ms. Lee had been in a romantic relationship with Mr. Blasdell since 2011 despite his legal marriage to Ms. Blasdell and well before the work injury. Ex. JE3, p. 5; App. p. 61. Ms. Lee stated Mr. Blasdell “claimed he was consistently unable to get ahold of Heather to coordinate anything.” Ex. JE3, p. 5; App. p. 61.

When Roger Blasdell filed his income tax return in 2011, he certified to the IRS that he was filing separately from Heather Blasdell. Ex. JE4, p. 1; App. p. 70. Mr. Blasdell again filed separately from Heather Blasdell in 2012, and he filed in the same manner in 2013. Ex. JE4, pp. 5, 9; App. pp. 74, 78. Defense counsel asked Mr. Blasdell at hearing whether the tax returns he had provided to the Defendants were certified IRS copies of tax returns, and he testified that they were simply copies of tax returns he kept for himself at home. Hearing Transcript, p. 30; App. p. 214. The Defendants were unable to timely obtain actual certified copies of Mr. Blasdell’s tax returns from the IRS due to multiple delays from Mr. Blasdell and his attorney refusing to completely fill out signed authorizations to release tax returns and disclose Mr. Blasdell’s social security number, which

is a requirement to obtain tax returns from the IRS. Ex. F, pp. 1 – 6; App. pp. 179 – 184.

The Defendants' investigation into the claim was also hindered by Mr. Blasdell's refusal to respond to discovery requests and objections to interrogatories. Ex. D, p. 2; App. p. 169. Mr. Blasdell should have provided the Defendants with detailed information regarding Heather Blasdell's suicide or accidental overdose, which is the argument he later asserted at hearing. Ex. D, p. 2; App. p. 169. Instead, he objected to providing any information regarding Ms. Blasdell's death in response to valid interrogatories propounded by the Defendants. Ex. D, p. 2; App. p. 169. Mr. Blasdell also initially refused to provide any information regarding individuals he was romantically involved with after he abandoned Ms. Blasdell in 2011, as he claimed it was "not relevant to a claim for death benefits." Ex. D, p. 5; App. p. 172. At the time Mr. Blasdell raised this objection, the Defendants had already asserted the affirmative defense of spousal abandonment, placing the relevance of Mr. Blasdell's romantic relationships with other parties during his legal marriage to Ms. Blasdell at the forefront of the claim. Answer, p. 3; App. p. 30.

When Mr. Blasdell completed paperwork for his employer, XL Specialized Trailers, he did not list Heather Blasdell as an emergency

contact, and he also certified to his employer that he was single. Ex. E, pp. 1 – 2; App. pp. 175 – 176. Although the Claimant attempted to allege at hearing that he only filled out emergency contact paperwork in 2017, he provided no explanation for why his personnel file contained no earlier emergency contact designation forms. Hearing Transcript, pp. 22 – 23; App. pp. 206 – 207. It is also telling that when Mr. Blasdell filled out a W-4 form for his employer in 2011, he stated he was single. Ex. E, p. 3; App. p. 177. Furthermore, Mr. Blasdell stated he was single on a W-4 form he completed in 2015. Ex. E, p. 4. In Mr. Blasdell's deposition, he testified Heather Blasdell was a beneficiary of his health insurance. Ex. JE5, p. 3, Dep. p. 9; App. p. 84. However, he admitted at hearing that he produced no actual documentation supporting this assertion. Hearing Transcript, p. 21; App. p. 205. Mr. Blasdell also testified in his deposition that Heather Blasdell was a beneficiary on his life insurance policy as of November 5, 2012. Ex. JE5, p. 3, Dep. p. 10; App. p. 84. Again, Mr. Blasdell testified at hearing that he did not produce any health insurance documentation in support of this allegation. Ex. JE5, p. 3, Dep. p. 10; App. p. 84.

Mr. Blasdell claimed that as of November 5, 2012, Ms. Blasdell was listed as a driver of his vehicles under his car insurance policies. Ex. JE5, p. 3, Dep. p. 11; App. p. 84. At hearing, he admitted that he again produced no

documentation to support this allegation. Hearing Transcript, p. 21; App. p. 205. According to Mr. Blasdell, as November 5, 2012, Ms. Blasdell was renting property separately from him in Cedar Rapids, and he was not listed on Ms. Blasdell's lease. Ex. JE5, p. 3, dep. p. 12; App. p. 84. Mr. Blasdell testified at hearing that as of the date of the initial workers' compensation injury, Ms. Blasdell was living with a friend, Kyle Cunard (spelling unknown). Ex. JE5, p. 3, dep. p. 12; Hearing Transcript, pp. 21 – 22; App. pp. 84, 205 – 206. He admitted in his deposition that he never lived with Ms. Blasdell in 2012 at her property in Cedar Rapids. Ex. JE5, p. 4, dep. p. 15; App. p. 85. By 2012, he was living separately from Ms. Blasdell at his own property in Manchester, Iowa. Ex. JE5, p. 4, dep. pp. 13 – 14; App. pp. 85. Mr. Blasdell testified he began living separately from Ms. Blasdell in February 2011. Ex. JE5, p. 4, dep. p. 16; App. p. 85. He testified that he separated from Ms. Blasdell because of differences over finances, and he specifically stated he did not want to pay for Ms. Blasdell's expenses. Ex. JE5, p. 5, dep. p. 18; App. p. 86.

Although Mr. Blasdell claimed that from 2012 until the date of Ms. Blasdell's suicide, he saw her almost weekly, he provided no evidence aside from his own testimony of this fact. Ex. JE5, p. 5, dep. p. 19; App. p. 86. Although Mr. Blasdell claimed he gave Ms. Blasdell cash every week, he

admitted he had no receipts or records proving these alleged payments actually occurred. Ex. JE5, p. 5, dep. pp. 19 – 20; App. pp. 86. Mr. Blasdell’s admission that he separated from Ms. Blasdell because he did not want to pay for her expenses directly contradicts his later claim that he provided her with cash on a weekly basis. Ex. JE5, p. 5, dep. pp. 18 – 20; App. pp. 86. Despite Mr. Blasdell’s claim that he spoke with Ms. Blasdell on the phone weekly from 2012 until the date of her death, he provided no phone records proving this allegation. Ex. JE5, p. 5, dep. p. 20; App. p. 86. The only document Mr. Blasdell offered at hearing revealing any communications from Ms. Blasdell was a one-page sheet containing messages from Ms. Blasdell regarding a phone bill for her daughter. Ex. B, p. 1; App. p. 166. Mr. Blasdell provided no credible explanation at hearing for why he produced absolutely no other records of his purported communications with Ms. Blasdell. Hearing Transcript, p. 26; App. p. 26. The messages shown on Ex. B, p. 1, do not even reveal a responsive message from Mr. Blasdell to Ms. Blasdell, indicating he never responded to her. Ex. B, p. 1; App. p. 166.

Despite being legally married to Ms. Blasdell, Mr. Blasdell met his girlfriend, Angela Lee, in 2011 and moved in with her in 2012. Ex. JE5, p. 6, dep. pp. 21 – 22; App. pp. 87. He lived with Ms. Lee at his separate

property in Manchester, Iowa. Ex. JE5, p. 6, dep. p. 24; App. p. 87. Mr. Blasdell admitted he did not have any sexual relationship with Ms. Blasdell since he separated from her. Ex. JE5, pp. 6 – 7, dep. pp. 24 – 25; App. pp. 87 – 88. In Mr. Blasdell’s testimony, he was asked whether Ms. Blasdell provided any financial support to him from 2012 until the date she committed suicide. Ex. JE5, p. 7, dep. p. 25; App. p. 88. Mr. Blasdell stated, “I think she might have given me money once.” Ex. JE5, p. 7, dep. p. 25; App. p. 88. Mr. Blasdell changed this testimony at hearing and claimed that Ms. Blasdell provided him with cash “[p]robably maybe five times a year.” Hearing Transcript, p. 28; App. p. 212. Mr. Blasdell admitted that Ms. Blasdell did not share any of her workers’ compensation benefits with him from 2012 until the date of her suicide. Ex. JE5, p. 7, dep. p. 25; App. p. 88. He also engaged in no conversations with Ms. Blasdell about sharing her workers’ compensation benefits with him. Ex. JE5, p. 7, dep. pp. 25 – 26; App. pp. 88. Mr. Blasdell was not listed as a beneficiary on any Last Will and Testament that Ms. Blasdell may have left. Ex. JE5, p. 7, dep. p. 26; App. p. 88. In his deposition, Mr. Blasdell testified that he did not receive any cash or property from Ms. Blasdell’s estate. Ex. JE5, p. 7, dep. p. 26; App. p. 88. At hearing, he changed his testimony and claimed he

removed several items of sentimental value from Ms. Blasdell's apartment. Hearing Transcript, p. 31; App. p. 215.

Mr. Blasdell did not testify at Heather Blasdell's workers' compensation hearing. Ex. JE5, p. 7, dep. p. 26; App. p. 88. He admitted he was never asked to testify by Ms. Blasdell's attorney. Ex. JE5, p. 7, dep. p. 2; App. p. 88. Ms. Blasdell was deposed by former defense attorney Thomas Wolle on January 24, 2014. Ex. A, p. 1; App. p. 144. She testified she had been separated from Mr. Blasdell for three years, proving she had been separated from him since at least 2011. Ex. A, p. 3, dep. p. 6; App. p. 146. Ms. Blasdell testified that the only reason she did not divorce Mr. Blasdell formally was because she did not have the money to do so. Ex. A, p. 3, dep. p. 6; App. p. 146. Although Mr. Blasdell claimed he could have afforded a divorce, his testimony that he "couldn't handle paying the rent by [him]self" during the same period undermines that claim. JE 5, p. 5, dep. pp. 18 – 19; App. pp. 86.

V. ARGUMENT

A. Standard of Review

The burden is on the Claimant to prove both that the injury "arose out of" and "in the course of" his or her employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000). An injury "arises out of" the employment

when there is a causal relationship between the employment and the injury, and the injury must be a “rational consequence of the hazard connected with the employment.” 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995) (citations omitted). Mr. Blasdell has the burden of proving by a preponderance of the evidence that Ms. Blasdell’s death was causally related to injuries arising out of and in the course of her employment. Lithcote Co. v. Ballenger, 471 N.W.2d 64, 66 (Iowa App. 1991). A possibility of causation is not sufficient; a probability is necessary. Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 297 (Iowa 1974). The question of causal connection is within the domain of expert testimony. Lithcote Co., 471 N.W.2d at 66. The weight to be given expert opinions is for this Agency to decide. *Id.*

The District Court’s review was governed by Iowa Code chapter 17A (2013). Mike Brooks, Inc. v. House, 843 N.W.2d 885, 888 (Iowa 2014). Under chapter 17A, the District Court acts in an appellate capacity to correct errors of law. *Id.* The District Court is bound by the Commissioner’s findings of fact as long as those findings are supported by substantial evidence. Evenson v. Winnebago Indus., Inc., 881 N.W.2d 360, 333 (Iowa 2016). Substantial evidence is “the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to

establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.” Iowa Code § 17A.19(10)(f)(1).

When reviewing an Agency action, the District Court may only reverse or modify if the Agency’s decision is erroneous under one of the provisions set forth in Iowa Code section 17A.19(10), and a party’s substantial rights were prejudiced. Gits Mfg. Co. v. Frank, 855 N.W.2d 195, 197 (Iowa 2014). Therefore, the District Court may reverse “upon a showing that the commissioner’s application of law to the facts of this case meets the demanding ‘irrational, illogical, or wholly unjustifiable’ standard of section 17A.19(10)(m).” Midwest Ambulance Serv. v. Ruud, 754 N.W.2d 860, 865 (Iowa 2008).

“If the findings of fact are not challenged, but the claim of error lies with the agency’s interpretation of the law, the question on review is whether the agency’s interpretation was erroneous, and [the district court] may substitute [their] interpretation for the agency’s.” Meyer v. IBP, Inc., 710 N.W.2d 213, 219 (Iowa 2006) (citing Iowa Code § 17A.19(10)(c)). In addition, if “the claim of error lies with the ultimate conclusion reached, then the challenge is to the agency's application of the law to the facts, and the question on review is whether the agency abused its discretion by, for

example, employing wholly irrational reasoning or ignoring important and relevant evidence.” Id. (citing Iowa Code § 17A.19(10)(i), (j)). “[T]he commissioner as the fact finder has the responsibility for determining credibility of witnesses,” and the District Court is “bound by the commissioner’s findings if supported by substantial evidence.” Sherman v. Pella Corp., 576 N.W.2d 312, 320 (Iowa 1998).

The Iowa Supreme Court reviews the Commissioner’s legal findings for the correction of errors at law. IBP, Inc., v. Burress, 779, N.W.2d 210, 213 (Iowa 2010). The Court is bound by the Commissioner’s fact findings as long as substantial evidence supports the findings. Evenson v. Winnebago Indus., Inc., 881 N.W.2d 360, 333 (Iowa 2016). The Iowa Supreme Court applies the same standard of review utilized by the District Court, that if “the claim of error lies with the *ultimate conclusion* reached, then the challenge is to the agency’s application of law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring importation and relevant evidence.” Meyer, 710 N.W.2d at 219 (citing Iowa Code § 17A.19(10)(i), (j)).

B. The Supreme Court Should Reverse the Court of Appeals Decision Affirming the District Court Order that Found Roger Blasdell did not Abandon Heather Blasdell.

The Appellants have preserved error on the issue of whether Roger Blasdell was entitled to Heather Blasdell's workers' compensation benefits because this issue was raised in the Petitioners' Appeal Brief filed with the District Court, and the District Court addressed this argument in the December 6, 2021 Order Granting Petition for Judicial Review. Order Granting Petition for Judicial Review, p. 8; App. p. 300.

Deputy Stephanie Copley concluded in the Arbitration Decision issued August 6, 2019, that Mr. Blasdell "willfully deserted Heather and therefore is not entitled to death benefits." Arb. Dec., p. 11; App. p. 238. The Deputy concluded Mr. Blasdell's dependence on the Claimant's earnings ended when they separated in early 2011, and Ms. Blasdell "never shared her workers' compensation benefits" with him. Arb. Dec., p. 11; App. p. 238. Furthermore, the Deputy concluded Mr. Blasdell "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." Arb. Dec., p. 11; App. p. 238. Finally, the Deputy found Mr. Blasdell'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., p. 11; App. p. 238.

In the Appeal Decision, the Commissioner cited Iowa Code section 85.31(1)(a)(1), which states that when “death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of the injury.” App. Dec., p. 5; App. p. 275. The Commissioner concluded Mr. Blasdell and Ms. Blasdell “intended to terminate their marriage relationship in January 2011” prior to the work injury. App. Dec., p. 7; App. p. 277. The Commissioner also found that “any dependency [Mr. Blasdell] might have had on [Ms. Blasdell’s] earnings ended in January 2011.” App. Dec., p. 7; App. p. 277. The Commissioner specifically found there was no evidence Mr. Blasdell received any of Ms. Blasdell’s workers’ compensation benefits; therefore, he failed to carry his burden of proof that he was “a dependent who is ‘wholly dependent’ on the earnings of [Ms. Blasdell] for support at the time of the November 2012 date of injury.” App. Dec., p. 7; App. p. 277.

The Appellants established through irrefutable evidence that Mr. Blasdell had clearly abandoned Heather Blasdell both as of November 5, 2012, the date of the initial injury, and September 9, 2016, the date of Ms. Blasdell’s suicide. Despite Mr. Blasdell’s numerous allegations at hearing and in his deposition of repeated contacts with Ms. Blasdell and ongoing provision of financial resources, he provided absolutely no objective

evidence at hearing of their supposed ongoing relationship. Ex. JE5, p. 5, dep. pp. 18 – 20; App. pp. 86. This Court should find it difficult to reconcile Mr. Blasdell’s claim at hearing that he financially supported Ms. Blasdell with his admission under oath that he separated from Ms. Blasdell because he did not want to pay for her expenses. Ex. JE5, p. 5, dep. pp. 18 – 20; App. pp. 86. Therefore, this Court should find the Iowa Court of Appeals erred when it concluded the parties “agreed to live separately due to their financial circumstances.” Appeal Decision, p. 11

Mr. Blasdell was questioned extensively both in his deposition and at hearing regarding whether he possessed any written documentation whatsoever supporting his allegations that Ms. Blasdell was a beneficiary of his health and life insurance and that he engaged in numerous forms of written and verbal communication with her on a variety of electronic devices from November 5, 2012, to the date of her suicide. Ex. JE5, p. 3, dep. pp. 9 – 10; App. p. 84. In the current digital age in which the parties engaged in supposed extensive communications, it seems impossible that Mr. Blasdell was only able to produce a single page of messages from Ms. Blasdell dated June 27, 2016, months prior to Ms. Blasdell’s suicide. Ex. B, p. 1; App. p. 166. Mr. Blasdell had ample opportunity to provide e-mail records, instant messaging and Snapchat records, and text message records proving his

alleged extensive communication with Ms. Blasdell, yet he provided absolutely nothing aside from one page of messages from Ms. Blasdell. Ex. B, p. 1; App. p. 166. Furthermore, Mr. Blasdell listed himself as single on multiple tax forms in 2011 and 2015, proving his intention to be considered legally unmarried by both his employer and the federal government. Ex. E, pp. 3 – 4; App. pp. 177 – 178.

Pursuant to Iowa Code section 84.42(1)(a), “[w]hen it is shown that at the time of the injury the surviving spouse had willfully deserted deceased without fault of the deceased, then such survivor shall not be considered as dependent in any degree.” In the case at hand, the Appellants have established Mr. Blasdell willfully deserted Heather Blasdell without any fault on the part of Ms. Blasdell. The Commissioner agreed with this finding. App. Dec., p. 7; App. p. 277. Mr. Blasdell made no allegations at hearing or in his deposition that Ms. Blasdell was unfaithful to him or engaged in any other type of behavior or deceit that caused him to desert her. See Ex. JE5, p. 5; App. p. 86. Instead, Mr. Blasdell admitted that he separated from Ms. Blasdell because he did not want to continue to pay for her expenses. Ex. JE5, p. 5, dep. p. 18 – 20; App. p. 86. It is certainly not any fault of Ms. Blasdell that she experienced difficulties with her finances,

as she was receiving workers' compensation benefits that were surely reduced by one-third for attorney fees collected by Tom Wertz, her attorney.

In the case of James Black Dry Goods Co. v. Iowa Industrial Com'r, 186 Iowa 657, 660, 173 N.W. 23, 24 (1919), the court stated that the “cessation of the marriage relations, the intent to desert, and the absence of consent of misconduct of the party alleged to have been deserted—are necessary to constitute desertion under the compensation statute.” In the James Black case, there were a number of letters and postcards exchanged between the husband and wife after the date of desertion, and the decedent sent his wife money. Id. Therefore, the Court held there was not desertion because the mere fact that they did not live together was not enough to constitute desertion. Id. In contrast to the James Black case, Mr. Blasdell was only able to produce a single page of messages from Ms. Blasdell dated June 27, 2016, instead of the numerous letters and postcards exchanged by the spouses in James Black. Ex. B, p. 1; App. p. 166. In the case at hand, Mr. Blasdell's testimony clearly supports his intention to desert Ms. Blasdell because he admitted he left the relationship because he no longer wished to financially support her. Ex. JE5, p. 5, dep. pp. 18 – 20; App. pp. 86. Mr. Blasdell has offered no evidence that Ms. Blasdell consented to his abandonment of her, and in fact, she stated in her suicide letter that she was

distraught by the fact that “every guy I try and date never sticks by me or he dies.” Ex. JE2, p. 4; App. p. 53.

The District Court appears to have relied upon the fact that Mr. Blasdell remained in the home he had shared with Ms. Blasdell before he ended the relationship because he no longer wished to financially support her in order to conclude he did not willfully desert Ms. Blasdell. Ex. JE5, p. 5, dep. pp. 18 – 20; Order on Petition for Judicial Review, p. 7; App. pp. 86. However, this focus on which party physically stayed in the initially shared home ignores Mr. Blasdell’s testimony that his relationship with Ms. Blasdell ended specifically because he no longer wished to provide any financial support to her. Ex. JE5, p. 5, dep. pp. 18 – 20. App. p. 86. Although Judge Gogerty correctly noted that a factor to be considered in the determination of whether the surviving spouse abandoned the deceased spouse was whether “there [wa]s a design to forsake the other spouse willfully[,]” she should have applied Mr. Blasdell’s testimony that he ended the relationship based on his intention to stop financially supporting Ms. Blasdell to conclude he had a design to forsake her. Order on Petition for Judicial Review, p. 6; App. p. 298.

In the James Black case, there was substantive evidence that the decedent sent his wife money. 186 Iowa 657, 660, 173 N.W. 23, 24. In the

case at hand, Mr. Blasdell testified in his deposition that Ms. Blasdell provided him with a small amount of cash possibly on one occasion, although he later changed this testimony at hearing to claim she provided small amounts of cash possibly five times per year. Ex. JE5, p. 7, dep. p. 25; Hearing Transcript, p. 28; App. pp. 88. The possibility that Ms. Blasdell provided Mr. Blasdell with a small amount of cash on one occasion over the course of five years simply fails to conform to the facts set forth in James Black that established a clear history of financial support from the decedent to the Claimant. 186 Iowa 657, 660, 173 N.W. 23, 24. Furthermore, Mr. Blasdell's changing testimony about the amount of financial support allegedly provided should prevent this Court from relying on his testimony. Ex. JE5, p. 7, dep. p. 25; Hearing Transcript, p. 28; App. p. 88. His changing testimony should have also prevented the Iowa Court of Appeals from finding "Roger sometimes gave money to Heather, and sometimes she gave money to him." Appeal Decision, p. 11

Because the Appellants have clearly established that Mr. Blasdell abandoned Heather Blasdell under Iowa Code section 84.42(1)(a), this Court should reverse the Iowa Court of Appeals Decision that affirmed the District Court's Order on Petition for Judicial Review and affirm the Commissioner's Appeal Decision that found Mr. Blasdell was not entitled to

Ms. Blasdell's workers' compensation benefits, especially given the fact that he did not share in any of her workers' compensation benefits whatsoever during the years she received benefits. Ex. JE5, p. 7, dep. p. 25. App. Dec., p. 7; App. pp. 88.

The Supreme Court should find that the facts of this case are extensively different from the facts in the James Black case; therefore, the Supreme Court should find the Iowa Court of Appeals entered a decision that was in conflict with James Black pursuant to Iowa Rule of Appellate Procedure 6.113(1)(b)(1). The Supreme Court should also find the Iowa Court of Appeals erred in finding the appellee did not abandon his spouse because the legal principles of spousal abandonment have changed since the James Black case was issued during a time where at fault divorce was the legal standard in Iowa pursuant to Iowa Rule of Appellate Procedure 6.113(1)(b)(3).

VI. CONCLUSION

Linnhaven, Inc., and Accident Fund National Insurance Company/United Heartland have established Roger Blasdell is not entitled to Heather Blasdell's workers' compensation benefits because he willfully deserted her prior to the work injury. Therefore, this Court should reverse the Iowa Court of Appeals Decision that affirmed the District Court Order

granting Mr. Blasdell's Petition for Judicial Review and remanding the case to the Commissioner for a determination of whether the claim was barred by the intentional injury defense.

WHEREFORE, Appellants pray that this Court reverse the Iowa Court of Appeals Decision that affirmed District Court Order granting Mr. Blasdell's Petition for Judicial Review and remanding the case to the Commissioner for a determination of whether the claim was barred by the intentional injury defense.

VII. REQUEST FOR NON-ORAL SUBMISSION

Appellants hereby waive oral arguments and request non-oral submission of the case to the Iowa Supreme Court.

VIII. CERTIFICATE OF COST

Appellants certify that the cost of electronically reproducing the Application for Further Review was \$0.00.

IX. CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION.

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 point font and contains 5,867 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

this brief has been prepared in a monospaced typeface using _____ in _____ and contains _____ lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

/s/ Laura J. Ostrander
Signature

August 3, 2022
Date

X. CERTIFICATE OF SERVICE

The undersigned certifies a copy of Appellants’ Application for Further Review was served on the 3rd day of August, 2022, upon the following persons and upon the Clerk of the Iowa Supreme Court via electronic filing.

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Clerk of the Iowa Supreme Court
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/s/ Karen Duffield
Karen Duffield

IN THE COURT OF APPEALS OF IOWA

No. 21-1968
Filed July 20, 2022

**LINNHAVEN, INC., and ACCIDENT FUND NATIONAL INSURANCE
COMPANY/UNITED HEARTLAND,**
Plaintiffs-Appellants,

vs.

ROGER BLASDELL, SURVIVING SPOUSE OF HEATHER BLASDELL,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Celene Gogerty, Judge.

An employer appeals from a district court ruling that reversed the decision of the workers' compensation commissioner. **AFFIRMED.**

Laura Ostrander, Assistant General Counsel, Lansing, Michigan, for appellants.

Thomas Wertz and Mindi M. Vervaecke of Wertz Law Firm, Cedar Rapids, for appellee.

Heard by Bower, C.J., and Schumacher and Ahlers, JJ.

SCHUMACHER, Judge.

Linnhaven, Inc. and its insurer, Accident Fund National Insurance Company/United Heartland (referred to together as Linnhaven), appeal from a district court ruling that reversed the decision of the workers' compensation commissioner. The district court found Roger Blasdell was not barred from receiving workers' compensation benefits for the death of his wife, Heather Blasdell, based on desertion without fault of Heather. The commissioner's decision was not supported by substantial evidence within the meaning of Iowa Code section 85.42(1)(a) (2017). We affirm the decision of the district court.

I. Background Facts & Proceedings

Roger and Heather were married in 2008. They lived together in Iowa with Heather's son, first in Ryan, and then in Delhi.¹ Heather lost her job in December 2010 and could not find another job in the area. In January 2011, Heather moved to Clinton. She took only her clothes and vehicle. She later moved to Cedar Rapids and obtained employment at Linnhaven. Heather's son remained living with Roger, and the two of them moved to Manchester. Roger listed himself as single on a W-4 form in 2011 and 2015. In 2011 and 2012, Roger filed his taxes as married filing separately.

On November 5, 2012, Heather sustained an injury while working at Linnhaven. Heather was deposed on January 21, 2014. She stated that she was separated from Roger and the reason they had not divorced was "money."

¹ Heather and Roger are also the parents of a daughter. For reasons not clear from the record, their daughter lived with the maternal grandmother.

Heather's marital status was not an issue in the workers' compensation proceedings.

A deputy workers' compensation commissioner determined Heather was permanently and totally disabled as a result of the work injury, noting "[a]s a result of the work injury to her right heel she sustained physical impairment coupled with a more severe psychological impairment, which has rendered her unable to work." She was awarded workers' compensation benefits for as long as she remained permanently and totally disabled. The deputy's decision was affirmed by the commissioner.²

On September 9, 2016, Heather died as a result of an overdose of prescription medication.³ Roger filed a claim for death benefits as Heather's surviving spouse. He also sought reimbursement for Heather's burial expenses, which he had paid. Linnhaven asserted that Roger was not entitled to death benefits under section 85.42(1)(a), which provides that a surviving spouse is not entitled to death benefits "[w]hen it is shown that at the time of the injury the surviving spouse had willfully deserted deceased without fault of the deceased, then such survivor shall not be considered as dependent in any degree."⁴

In a deposition taken on April 3, 2018, Roger stated that at the time of the November 5, 2012 injury, Heather was the beneficiary of his life insurance policy, was listed as a driver on his car insurance, and was listed as an emergency contact

² The commissioner delegated the authority to issue the final agency decision to a deputy workers' compensation commissioner.

³ The issue of whether Heather's death was intentional is not before our court in this appeal.

⁴ Linnhaven also claimed Roger did not show Heather's death was caused by a work-related injury. That issue is not part of this appeal.

at his work. Roger asserted that Heather would stay in Manchester with him and her son from time to time. He and Heather did not have an intimate relationship. He stated they did not get divorced because “[w]e never fully wanted it.” Roger continued to see Heather “[a]lmost weekly” and gave her money. They exchanged telephone calls and text messages.

Roger’s former girlfriend, Angela, was also deposed on April 3. Angela stated that she was dating Roger at the time of Heather’s injury on November 5, 2012, but she was not dating Roger at the time of the deposition. Angela and Roger cohabited for a time. Angela knew that Roger and Heather were married and that they continued to communicate.

A hearing was held on May 15, 2018. Roger’s testimony was similar to his deposition testimony. He stated that he and Heather separated in January 2011 mainly for financial reasons. He stated that they maintained contact from the time they separated until Heather’s death. Roger provided Heather weekly financial assistance. He testified Heather also helped him financially about five times per year.

Heather’s son testified he was living with Heather in Cedar Rapids when she was injured in 2012. He stated:

I know that [Roger and Heather] had frequent conversations throughout the week. I don’t necessarily know about what they talked about, but I know that they were in contact with each other. And throughout—after her injury, I had been present a few different times when they had met up with each other.

Heather’s son stated that sometimes Roger would meet Heather to give her money “to help out with bills,” and sometimes it was just to “check up and see how everybody was doing.”

Following the hearing, the deputy workers' compensation commissioner who presided over the hearing became unavailable. The workers' compensation commissioner authorized another deputy to issue a proposed decision. This deputy relied on the record and the post-hearing briefs. On August 6, 2019, the deputy found:

Ultimately, regardless 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 Heather'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 [Angela] 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 Heather'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.

The deputy also found, "[T]he period of time between Heather's work-related injury and her death reflects a continuation of the termination of the marital relationship between Heather and Roger."

The deputy concluded "Roger had willfully deserted Heather without fault by Heather as of 2011—before her underlying work-related injury." The deputy determined that based on the statutory language in section 85.42(1)(a), Roger was not entitled to death benefits.

Roger requested a rehearing because the deputy who presided over the hearing was not the author of the proposed decision. Roger claimed the demeanor of the witnesses was a substantial factor in the case. The commissioner ruled,⁵ “in an effort to maintain the integrity of the contested case process before this agency, rehearing is granted in this matter.”

A new hearing was held in July 2020 before the deputy who had issued the ruling in the case. No new exhibits were permitted, and only Roger testified. He testified it was Heather’s decision to move to Clinton and she believed she could find employment there. Roger testified Heather could come and go from his home whenever she wanted. He stated he sometimes stayed with Heather in Cedar Rapids but did not live with her.

Following the rehearing, the deputy ruled:

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.

The deputy determined, however, that the findings on Roger’s demeanor did not change the conclusion that Heather and Roger intended to terminate their marital relationship in early 2011, and this remained the case at the time of Heather’s injury in 2012 and her death in 2016. The deputy again determined that Roger was not entitled to death benefits.

⁵ A deputy issued this ruling on the authorization of the commissioner.

Roger appealed the deputy's decision to the workers' compensation commissioner.⁶ The commissioner determined that under section 85.42(1)(a), the term "at the time of the injury" meant at the time of Heather's injury in November 2012. The commissioner found Roger willfully and intentionally separated from Heather before her injury. The commissioner also found this separation was without the fault of Heather. The commissioner concluded Roger was not dependent on Heather and determined he was not entitled to death benefits.

Roger petitioned for judicial review. The district court found that for Roger to collect death benefits, "at the time of injury, [Roger] must (1) be Heather's spouse and (2) not have deserted her." The court stated:

Both parties and the [commissioner] seem to treat the questions of whether [Roger] and Heather were married at the time of injury and whether [Roger] abandoned Heather as one in the same. They are not. A person could abandon their spouse but they would still be married until a divorce decree was entered as there is no common law divorce. *In re Weems' Estate*, 139 N.W.2d 922, 924 (Iowa 1966). It is undisputed that [Roger] and Heather never received a divorce decree. Therefore, at the time of Heather's injury, she and [Roger] were still married.

The court also stated:

To be clear, in order for this exception [in section 85.42(1)(a)] to apply, [Roger] had to have deserted Heather. If Heather deserted [Roger], [Roger] would still be eligible for survivor's benefits. Likewise, if neither party deserted one another, [Roger] is eligible for survivor's benefits. If both parties deserted the marriage, then it cannot be said Heather is without fault, so [Roger] would still collect. Therefore, the only question the Court need decide is whether [Roger] deserted Heather.

(Internal citations omitted).

⁶ A deputy was authorized to make a decision in lieu of the commissioner. Because the deputy was acting at the direction of the commissioner, we will treat the deputy's decision as if it were made by the commissioner.

The district court found the facts did not support a finding that Roger deserted Heather. The court noted Heather's child remained in the marital home with Roger, Roger tried to remain in contact with Heather, and in 2011 and 2012 he listed his marital status as "married filing separately" on his income tax forms. The court found Roger did not have the requisite intent to desert Heather. The court determined the case should be remanded to the commissioner for a ruling on whether Heather's death was barred by the willful injury exception. Linnhaven appeals the decision of the district court.

II. Standard of Review

"When reviewing the decision of the district court's judicial review ruling, we determine if we would reach the same result as the district court in our application of the Iowa Administrative Procedure Act." *Sladek v. Emp. Appeal Bd.*, 939 N.W.2d 632, 637 (Iowa 2020) (quoting *Insituform Techs., Inc. v. Emp. Appeal Bd.*, 728 N.W.2d 781, 787 (Iowa 2007)). The commissioner's factual findings are upheld on appeal if they are supported by substantial evidence when the record is viewed as a whole. *Evenson v. Winnebago Indus., Inc.*, 881 N.W.2d 360, 366 (Iowa 2016). We consider whether there is substantial evidence to support the findings made by the commissioner, not whether the evidence could support different findings. *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).

III. Desertion of Spouse

Linnhaven claims the district court erred by finding Roger did not desert Heather. It asserts that Roger and Heather intended to terminate their marriage relationship when they separated in 2011, before Heather's injury in November 2012. It points to the following testimony by Roger:

Q. Did you have differences over finances? A. Yes. I was paying for a majority of everything.

Q. And was that something you didn't want to be doing? You didn't want to be paying for a majority of everything? A. Yes, that's correct.

Q. Did you have any specific discussions when you separated in 2011 with Ms. Blasdell regarding the reasons why you separated?

.....

A. I couldn't—I couldn't handle paying rent by myself.

From this testimony, Linnhaven claims Roger separated from Heather because he did not want to pay her expenses. Linnhaven claims Roger's desertion of Heather was not because of any fault by Heather and argues that Roger is not entitled to death benefits based on section 85.42(1)(a).

Section 85.31(1)(a) provides:

When death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of the injury, during their lifetime, compensation upon the basis of eighty percent per week of the employee's average weekly spendable earnings, commencing from the date of death as follows:

(1) To the surviving spouse for life or until remarriage, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum, if there are no children entitled to benefits.

Under section 85.42(1), a surviving spouse is presumed to be wholly dependent on the deceased spouse. *Rojas v. Pine Ridge Farms, L.L.C.*, 779 N.W.2d 223, 233 (Iowa 2010); *Carter v. Alter Trading Corp.*, No. 11-1697, 2012 WL 4898275, at *2 n.6 (Iowa Ct. App. Oct. 17, 2012). There is an exception “[w]hen it is shown that at the time of the injury the surviving spouse had willfully deserted deceased without fault of the deceased, then such survivor shall not be considered as dependent in any degree.” Iowa Code § 85.42(1)(a). The exception would only apply if Roger deserted Heather without fault by Heather. *See id.*

The exception involving a deserting spouse was discussed in *James Black Dry Goods Co. v. Iowa Industrial Commissioner*, where the primary issue was whether the wife had deserted the husband prior to his death in a work-related accident. 173 N.W. 23, 24 (Iowa 1919). After several years of marriage, the husband left the marital residence due to “serious financial difficulty” and traveled to find work. *Id.* The husband and wife met periodically, and the husband mailed money to the wife. *Id.* at 25.

The Iowa Supreme Court stated, “the dependence is presumed unless there is desertion, where the marriage relation between husband and wife is involved.” *Id.* at 24. In order to show desertion, there must be proof of these elements: (1) “the cessation of the marriage relations”; (2) “the intent to desert”; (3) “a continuance of the desertion during the statutory period”; and (4) “the absence of consent or misconduct of the deserted party.” *Id.* Looking at the facts of the case, the court found:

We are of opinion that the evidence falls far short of showing desertion on the part of [the wife]. The mere fact that they did not live together is not enough. We have held that separation and desertion are not synonymous. . . . We have said in a divorce case that the act is willful when there is a design to forsake the other spouse willfully or without cause, 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.

Id. at 25. The court noted that if spouses agreed to live apart, there was no desertion. *Id.*

First, we recognize the case law on desertion, which borrowed language from marital cases in the same timeframe, is over 100 years old.⁷ However, neither party urges for modification of these standards defined by this case law. The evidence shows Roger and Heather lived separately for financial reasons. They rented a house in Delhi and lived there with Heather's son. After Heather lost her job, she looked for new employment in the area but was unsuccessful. They could not afford the rent for the Delhi home on Roger's income alone. Heather moved first to Clinton, and then to Cedar Rapids looking for a job. Heather's son remained living with Roger, although at times he also lived with Heather. Roger also had a girlfriend residing with him for some time, and Heather dated as well. Roger and Heather maintained friendly relations, talking often. Roger sometimes gave money to Heather, and sometimes she gave money to him. At the time of the November 2012 injury, Heather was the beneficiary of Roger's life insurance policy, was listed as a driver on his car insurance, and was listed as an emergency contact at his work. In 2011 and 2012, Roger filed his taxes as married filing separately.

We find the facts are similar, although not identical, to those in *James Black*, where the court determined there was insufficient evidence of desertion. See 173 N.W. at 25. As the court noted, "separation and desertion are not synonymous." *Id.* Furthermore, when spouses agree to live apart, there is no desertion. *Id.* The evidence does not show Roger had an intent to desert Heather without the fault of Heather. Heather left the marital home. The parties agreed to live separately due

⁷ As noted by the district court, the case law relied on by the parties derives from language concerning fault divorces.

to their financial circumstances, and based on their mutual agreement, “there is no desertion.” *See id.*

We affirm the district court. Substantial evidence does not support a finding that Roger deserted Heather, without fault by Heather, under section 85.42(1)(a).

IV. Other Issues

Linnhaven asserts that we should affirm the district court’s conclusion the commissioner’s designee could issue the final agency decision. Roger did not cross-appeal and does not claim the district court erred on this issue. We conclude there is no issue to be addressed, as both parties agree with the district court’s decision on this matter.

Linnhaven also asserts that we should find it is not barred from raising the defense of spousal desertion based on the doctrine of estoppel. The district court did not address the issue, stating, “The Court passes on the question of whether [Linnhaven] is estopped from arguing this point because the law is clear on the matter of whether [Roger] and Heather were still legally married at the time of injury.” Nor does Roger raise the issue of estoppel on appeal. We find there is no need to address the issue, as no party is claiming Linnhaven is estopped from raising the issue of spousal desertion.

V. Conclusion

We affirm the district court’s ruling. The commissioner’s decision that Roger deserted Heather without the fault of Heather was not supported by substantial evidence within the meaning of Iowa Code section 85.42(1)(a).

AFFIRMED.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number
21-1968

Case Title
Blasdell v. Linnhaven, Inc.

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY**ROGER BLASDELL****Petitioners,****v.****LINNHAVEN, INC.,****Respondent.****Case No. CVCV062137****RULING ON PETITIONER'S
APPLICATION FOR JUDICIAL REVIEW**

This matter comes before the Court on Roger Blasdell's July 7, 2021, Petition for Judicial Review. The Court held a hearing on November 12, 2021. After considering the parties' arguments and briefs, as well as the relevant case law, the Court enters the following ruling.

BACKGROUND FACTS

Heather Blasdell sustained a work-related injury on November 5, 2012. The workers compensation proceeding that followed found Heather suffered a permanent physical and mental injury. During the arbitration hearing, the parties stipulated that Heather and Claimant Roger Blasdell were married. On September 9, 2016, Heather died of an overdose of medications. The police determined it was either accidental or a suicide.

At the Arbitration hearing for this claim, Claimant testified that he and Heather had been married since 2008 but ceased living together in January 2011. Claimant states the reason was financial and Heather left Claimant with her son in their marital home, seeking employment elsewhere. Soon after, Claimant began a relationship with a Ms. Lee. Claimant also testified that he attempted to contact Heather multiple times after she moved. Heather's son testified that Claimant was successful in raising Heather, but Ms. Lee informed a private investigator that Claimant was unable to make contact with Heather.

Claimant testified that he would send Heather \$50 to \$100 per week and occasionally Heather would send him money back. On his 2011 and 2015 W4 forms Claimant indicated he was single. However, in his 2011 and 2014 taxes, Claimant file as married filed separately.

Claimant filed a petition seeking death benefits. The case proceeded to Arbitration Hearing on May 15, 2018, before Deputy Commissioner Erica Fitch. On July 12, 2019, Commissioner Joseph Cortese II filed an Order of Delegation of Authority stating as follows: "Pursuant to Iowa Code section 17A.15(2) the authority for issuing a proposed decision in this matter will be assigned to Deputy Commissioner Stephanie J. Copley due to the present unavailability of Deputy Commissioner Erica J. Fitch."

Claimant did not file an objection or an appeal to the Order of Delegation of Authority. On August 6, 2019, Deputy Copley issued an Arbitration Decision finding Claimant "willfully deserted Heather and therefore is not entitled to death benefits." Deputy Copley issued a Rehearing Decision regarding Claimant's demeanor on July 24, 2020. Claimant subsequently filed a Notice of Appeal. Claimant's Appeal Brief contained the first objection to the Order of Delegation of Authority.

On June 8, 2021, Deputy Commissioner James Christensen issued an Appeal Decision finding that Claimant waived any argument that the demeanor hearing was an inadequate remedy. Deputy Christensen also found Claimant "did not object to the demeanor hearing" and he "did not argue, at the July 20, 2020 hearing, that the demeanor hearing was an inadequate remedy." Deputy Christensen found that the doctrines of judicial estoppel and res judicata did not bar the Respondents from raising the issue of Claimant's marital status as an issue in the case. Deputy Christensen also concluded

Claimant willfully deserted Heather prior to the work injury, so he was not entitled to collect survivor's benefits.

STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of the Court's review in workers' compensation cases. Iowa Code § 86.26 (2019); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, we may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." *Meyer*, 710 N.W.2d at 218. A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was *ultra vires*; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. See *id.* § 17A.19(10). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002).

"If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact" when the record is viewed as a whole. *Meyer*, 710 N.W.2d at 219. Factual findings regarding the award of workers' compensation benefits are within the commissioner's discretion, so the Court is bound by the commissioner's findings of fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004). Substantial evidence is defined as evidence of the quality and quantity "that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue

when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.” Iowa Code § 17A.19(10)(f)(1); *Mycogen*, 686 N.W.2d at 464.

The application of the law to the facts is also an enterprise vested in the commissioner. *Mycogen*, 686 N.W.2d at 465. Accordingly, the Court will reverse only if the commissioner's application was “irrational, illogical, or wholly unjustifiable.” *Id.*; Iowa Code § 17A.19(10). “A decision is “irrational” when it is not governed by or according to reason.” *Christensen v. Iowa Dep’t. of Revenue*, 944 N.W.2d 895 at 905 (Iowa 2020). A decision is “illogical” when it is “contrary to or devoid of logic.” *Id.* “A decision is “unjustifiable” when it has no foundation in fact or reason” or is “lacking in justice.” *Id.* This standard requires the Court to allocate some deference to the commissioner's application of law to the facts, but less than it gives to the agency's findings of fact. *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).

MERITS

I. Whether the demeanor hearing is an adequate remedy

Claimant argues that delegation of authority to write the arbitration decision was improper. The Appeal Decision found that Claimant waived this argument by not raising a complaint about the delegation until 125 days after the Arbitration Decision was entered. Claimant provides no case law, statute, or argument in dispute of that holding. Claimant has not carried his burden. Iowa Code § 17A.19(8)(a). Additionally, the benefit being conferred by having the Deputy who heard the case write the ruling is to have the Deputy determine the demeanor of the Claimant. The commission granted a second demeanor

hearing and found Claimant to be a credible witness. Therefore, Claimant has not been prejudiced by the delegation of authority.

II. Whether Complainant was a dependent of Heather

“When death results from the [workplace] injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at time of the injury...” Iowa Code § 85.31(1)(a). The surviving spouse is “conclusively presumed to be wholly dependent upon the deceased employee” unless, “at the time of injury, the surviving spouse had willfully deserted the deceased without fault of the deceased...” Iowa Code § 85.42(1)(a). Accordingly, for Complainant to collect, at the time of injury, Claimant must (1) be Heather’s spouse and (2) not have deserted her.

Both parties and the Deputy Christensen seem to treat the questions of whether Claimant and Heather were married at the time of injury¹ and whether Claimant abandoned Heather as one in the same. They are not. A person could abandon their spouse but they would still be married until a divorce decree was entered as there is no common law divorce. *In re Weems’ Estate*, 139 N.W.2d 922, 924 (Iowa 1966). It is undisputed that Claimant and Heather never received a divorce decree. Therefore, at the time of Heather’s injury, she and Claimant were still married.²

Deputy Christensen’s finding that Claimant did not receive money from Heather and is therefore not wholly dependent on her, as required by Iowa Code section 85.31(1)(a), does not take into consideration section 85.42(1). App. Dec. at 7. A spouse

¹ The Deputy Commission is correct in stating the statute plainly states that the relationship at the time of the injury is the proper question, not the relationship at the time of death. App. Dec. at 6; Iowa Code § 85.31(1)(a).

² The Court passes on the question of whether Respondent is estopped from arguing this point because the law is clear on the matter of whether Claimant and Heather were still legally married at the time of injury.

is not required to receive support in order to be considered wholly dependent. Iowa Code § 85.42(1). The law presumes Claimant wholly dependent on Heather. *Id.* This presumption is subject to the desertion exception, however. *Id.* at 85.42(1)(A). To be clear, in order for this exception to apply, Claimant had to have deserted Heather. *Id.* If Heather deserted Claimant, Claimant would still be eligible for survivor's benefits. *Id.* Likewise, if neither party deserted one another, Claimant is eligible for survivor's benefits. *Id.* If both parties deserted the marriage, then it cannot be said Heather is without fault, so Claimant would still collect. *Id.* Therefore, the only question the Court need decide is whether Claimant deserted Heather. Iowa Code § 85.42(1)(A).

This law is from a time of fault divorces, is therefore antiquated, and sorely in need of modernizing by the legislature. As such, the case law regarding this issue is from 1919, and the Court must apply an outdated view of marital relationships. In *James Black Dry Goods v. Iowa Indus. Comm'r*, 173 N.W. 23 (Iowa 1919), the Iowa Supreme Court used the same standard used in fault divorce cases to determine whether the surviving spouse abandoned the deceased spouse. The factors are whether “there is a design to forsake the other spouse willfully or without cause, 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.” *Id.* at 25. If there was consent for one spouse to leave there may not be desertion. *Id.* (citing *Day v. Day*, 50 N.W. 979 (Iowa 1892)). Finally, mere separation is insufficient as “separation and desertion are not synonymous.” *James Black*, 173 N.W. at 25 (citing *Kupka v. Kupka*, 109 N.W. 610 (Iowa 1906); *Tipton v. Tipton*, 151 N.W. 90 (Iowa 1915)).

Here, Deputy Christensen found:

The record indicates that Roger and Heather intended to terminate their marriage relationship in January 2011. The record indicates Heather moved out of the house she shared with Roger at that time. Short after that in early 2011, Roger began a relationship with Ms. Lee. This was a relationship that lasted at least five years and included several years of cohabitation. The record reflects that after January 2011 Roger and Heather never lived together or had any sexual relationship. Given this record, it is found that Heather and Roger ended their marital relationship in January 2011. It is also found that Roger willfully and intentionally separated from Heather at that time.

As noted in the record, the separation between Heather and Roger occurred due to financial reasons. Given this fact, it is found that Roger's willful separation from Heather was without the fault of Heather.

App. Dec. at 7.

Deputy Christensen misapplied these facts to the law. These findings do not support the contention that Claimant abandoned Heather. Claimant remained in the marital home with Heather's child. Additionally, according to unrefuted testimony, Claimant attempted to contact Heather several times. App. Dec. at 3. Heather's son testified that Claimant was successful, while Ms. Lee stated Claimant was unsuccessful in contacting Heather. *Id.* Finally, while true that Claimant listed himself as single on his 2011 W4 form, Claimant stated on his 2011 and 2012 taxes that his marital status was "married filed separately." App. Dec. at 2. This shows that Claimant did not have the requisite intent to desert Heather as is required by case law. Additionally, the finding that both parties intended to end the marriage suggests that Heather is not without fault. Therefore, Deputy Christensen's application of facts to law is unjustifiable as it does not have a basis in fact.

III. Whether the willful injury exception applies

In order for Claimant to be entitled to survivor's benefits, Heather's death needed to result from the workplace injury. Iowa Code § 85.31(1)(a). Typically, willful self-injury is

a bar to recovery. Iowa Code § 85.16. However, in Iowa, and the majority of the states, suicide will not bar recovery of workers' compensation benefits "upon proof of a chain of causation directly linking an employment injury to a worker's loss of normal judgment and domination by a disturbance of the mind, causing suicide. *Kostelac v. Feldman's Inc.*, 497 N.W.2d 853, 857 (Iowa 1993) (quotations omitted) (rejecting the "uncontrollable impulse" or "delirium of frenzy" standard employed in *Schofield v. White*, 95 N.W.2d 40, 46 (Iowa 1959)). "[T]he suicide must be traced directly to some injury arising out of and in the course of employment." *Kostelac*, 497 N.W.2d at 857.

The Deputy Commission never reached this issue. Remand is appropriate so the commission can make the factual findings necessary to make the determination on this issue. Iowa Code § 17A.19 (10).

ORDER

Therefore, for the reasons stated above, the Court hereby overturns the commission's determination that Complainant abandoned Heather, and **REMANDS** the case to the commission to determine whether the willful injury exception applies.

SO ORDERED.



State of Iowa Courts

Case Number
CVCV062137
Type:

Case Title
ROGER BLASDELL VS LINNHAVEN INC ET AL
OTHER ORDER

So Ordered

Celene Gogerty, District Judge
Fifth Judicial District of Iowa

Electronically signed on 2021-12-06 16:01:06