

IN THE COURT OF APPEALS OF IOWA

No. 8-884 / 08-0554
Filed February 4, 2009

**JODY PEREZ ROJAS, alleged spouse,
and SAMUEL DAVID PEREZ, minor child,**
Petitioners-Appellants,

**YOLANDA CARRERAS NARVAEZ,
alleged spouse, and RAUL PEREZ
CARRERAS, JUAN CARLOS PEREZ
CARRERAS, VINCIO PEREZ
CARRERAS, YOLANDA PEREZ
CARRERAS, and MERCEDES PEREZ
CARRERAS, alleged minor children
of RAUL PEREZ ROJAS, Deceased,**
Petitioners-Appellants,

vs.

**PINE RIDGE FARMS, L.L.C., Employer,
and COMMERCE & INDUSTRY INS.
CO., Insurance Carrier,**
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,
Judge.

Dependents of deceased employee separately appeal from a district court
judicial review ruling affirming the appeal decision of the workers' compensation
deputy commissioner. **AFFIRMED ON BOTH APPEALS.**

Randall P. Schueller of Hopkins & Huebner, P.C., Des Moines, for appellants Yolanda Carreras Narvaez, Raul Perez Carreras, Juan Carlos Perez Carreras, Vincio Perez Carreras, Yolanda Perez Carreras, and Mercedes Perez Carreras.

Thomas J. Reilly of Thomas J. Reilly Law Firm, P.C., Des Moines, for appellants Jody Perez Rojas and Samuel David Perez.

Jean Z. Dickson of Betty, Neuman & McMahon, P.L.C., Davenport, for appellees.

Heard by Mahan, P.J., and Miller and Doyle, JJ.

DOYLE, J.

These are appeals from a district court judicial review ruling affirming the appeal decision of the workers' compensation deputy commissioner apportioning survivors' benefits following the death of Raul Perez Rojas. We affirm the judgment of the district court.

I. Background Facts and Proceedings.

Raul Perez Rojas was born and raised in a small town in Mexico. He married Yolanda Carreras Narvaez, a young girl from his town, in a religious ceremony in 1987. Soon after marrying Yolanda, Raul began traveling into the United States to work. He returned to Mexico periodically and fathered five children with Yolanda: Raul, born in June 1987, Juan Carlos, born in May 1989, Yolanda, born in October 1991, Vincio, born in 1995, and Mercedes, born in February 1998. Raul regularly sent money to Yolanda. She relied on that money as her "major, if not sole, source of income."

In 1999, while living and working in Iowa, Raul married Jody Perez Rojas. They had one child together: Samuel, born in 2002. Jody was not aware Raul had a wife and five children in Mexico. She believed the money he sent to Mexico was for his parents. Yolanda was also not aware Raul had married Jody and fathered a child with her.

On February 15, 2004, Raul was killed in an accident while working at Pine Ridge Farms, L.L.C. Jody and Yolanda each applied for survivors' benefits on behalf of themselves and their children under Iowa Code section 85.31 (2005). Following an arbitration hearing, the deputy workers' compensation commissioner found that Jody was Raul's surviving spouse because Yolanda's

marriage to Raul was not legally recognized in Mexico.¹ However, the deputy determined Yolanda was a dependent of Raul under sections 85.31(1)(d) and 85.44. The deputy accordingly allocated fifty percent of the death benefits to Jody as the surviving spouse and twenty percent to Samuel. The remaining thirty percent was assigned equally to Yolanda and her children. The deputy further ordered that one-half of the benefits apportioned to Yolanda and her children should be paid to the Second Injury Fund of Iowa (the Fund) as mandated in section 85.31(5).²

Both parties separately appealed, and a different deputy workers' compensation commissioner³ affirmed the arbitration decision with additional analysis. The deputy on appeal found that because "Yolanda and her family received approximately fifteen percent of Raul Rojas's earnings," they should likewise "receive fifteen percent of Raul's death benefits." He further found the hearing deputy was correct in apportioning thirty percent of the death benefits to Yolanda and her children because that would result in them actually receiving fifteen percent due to the effect of section 85.31(5).

¹ Evidence presented at the hearing established that in Mexico only civil marriages are recognized as legal. A religious ceremony is "without legal effect and in no way replaces the obligatory civil marriage." Furthermore, although Mexico recognizes common law marriages, the parties must publicly live together as a married couple for five years immediately preceding the death of one party without interruption.

² This section requires that

[e]xcept as otherwise provided by treaty, whenever . . . compensation is payable to a dependent who is an alien not residing in the United States at the time of the injury, the employer shall pay fifty percent of the compensation herein otherwise provided to such dependent, and the other fifty percent shall be paid into the second injury fund

Iowa Code § 85.31(5).

³ The workers' compensation commissioner delegated his authority to issue the final agency decision in this case to a deputy commissioner.

Jody and Yolanda each filed petitions for judicial review. Following a hearing, the district court affirmed the agency decision. Both parties now separately appeal the district court's decision on behalf of themselves and their children. Jody and Yolanda each claim the agency erred in its apportionment of Raul's death benefits. Yolanda additionally claims that section 85.31(5) violates the Due Process and Equal Protection Clauses of the United States and Iowa Constitutions and irreconcilably conflicts with section 85.51.

II. Scope and Standards of Review.

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of our review in workers' compensation cases. Iowa Code § 86.26; *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. 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). In reviewing the district court's decision, we apply the standards of chapter 17A to determine whether our conclusions are the same as those reached by the district court. *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 603 (Iowa 2005).

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. *Meyer*, 710 N.W.2d at 219. If, however, the findings 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, in which case we may substitute our own interpretation for the agency's. *Id.*

III. Discussion.

A. Apportionment.

Jody claims the agency erred in its interpretation of Iowa Code sections 85.31(3) and (5). She argues the agency was limited to the method prescribed in section 85.31(3) in apportioning benefits among Raul's dependents and thus it improperly considered the reduction of benefits mandated in section 85.31(5) in its allocation of benefits to Yolanda and her children.⁴ Yolanda, on the other hand, claims the agency's unequal apportionment of benefits to her and her children was not supported by substantial evidence. Before addressing these claims, we believe a brief overview of the applicable statutory framework is necessary.

Iowa Code section 85.31(1) provides that when death results from a work-related 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:

- a. To the surviving spouse for life or until remarriage . . . if there are no children entitled to benefits.
- b. To any child of the deceased until the child shall reach the age of eighteen, provided that a child beyond eighteen years

⁴ Jody also argues that three of Yolanda's children were "ineligib[le] to receive dependant death benefits." We need not and do not address this argument because it was neither raised in nor ruled upon by the district court on judicial review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

of age shall receive benefits to the age of twenty-five if actually dependent . . .

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- d. To all other dependents as defined in section 85.44⁵ for the duration of the incapacity from earning.

(Emphasis added.) A surviving spouse, with certain exceptions not applicable here, and children under eighteen years of age, “whether actually dependent for support or not upon the parent at the time of the parent’s death,” are “conclusively presumed to be wholly dependent upon the deceased employee.”

Iowa Code § 85.42.

Section 85.43 consequently provides that

[i]f the deceased employee leaves a surviving spouse qualified under the provisions of section 85.42, the full compensation shall be paid to the surviving spouse, as provided in section 85.31; provided that where a deceased employee leave[s] a surviving spouse and a dependent child or children the workers’ compensation commissioner may make an order of record for an equitable apportionment of the compensation payments.

However,

[i]f the employee leaves dependents only *partially dependent* upon the employee’s earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid, shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of the injury.

Iowa Code § 85.31(3) (emphasis added); see also Iowa Code § 85.44 (providing that “[i]f there is no one wholly dependent and more than one person partially

⁵ This section states that “[i]n all other cases, a dependent shall be one actually dependent or mentally or physically incapacitated from earning.” Iowa Code § 85.44; see also *Iowa Erosion Control, Inc. v. Sanchez*, 599 N.W.2d 711, 714 (Iowa 1999) (holding a parent who was actually dependent on her deceased son for financial support qualified as a dependent under section 85.44 and was entitled to survivors’ benefits under section 85.31(1)(d)). Jody does not challenge the agency’s finding that Yolanda was a dependent as defined in section 85.44.

dependent, the compensation benefit shall be divided among them in the proportion each dependency bears to their aggregate dependency”).

With this framework in mind, we reject Jody’s argument that the agency was required to allocate the death benefits in this case pursuant to the method detailed in section 85.31(3). Raul left both a surviving spouse and dependent children who are “conclusively presumed to be wholly dependent” upon him by operation of section 85.42. Section 85.43 accordingly provides that “full compensation shall be paid to the surviving spouse” unless the deceased employee also leaves dependent children, in which case the agency “may make an order of record for an equitable apportionment of the compensation payments.” The agency was thus vested with discretion under section 85.43 to equitably apportion the death benefits among Raul’s surviving spouse and dependent children.⁶ See *Zomer v. West River Farms, Inc.*, 666 N.W.2d 130, 135 (Iowa 2003) (“[T]he legislature has expressly granted the commissioner authority to equitably apportion benefits among dependents.”). We agree with the district court that nothing in either section 85.43 or 85.31(5) prohibited the agency from considering the reduction of benefits mandated in section 85.31(5) in its equitable apportionment of benefits.

We turn next to Yolanda’s claim that the agency’s unequal allocation of benefits to her and her children was not supported by substantial evidence. We

⁶ We recognize that the agency included Yolanda, who it determined was a dependent of Raul under sections 85.31(1)(d) and 85.44, in its allocation of benefits. We need not and do not address whether the agency erred in doing so because Jody does not raise such an argument on appeal. See *Hylar v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996) (“[O]ur review is confined to those propositions relied upon by the appellant for reversal on appeal.”). In fact, she concedes in her appellate brief that Yolanda and her children were entitled to at least fifteen percent of Raul’s death benefits.

are 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(f)(1); *Mycogen*, 686 N.W.2d at 464. Thus, evidence is substantial when a reasonable person could accept it as adequate to reach the same finding. *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 657 (Iowa 2006). "Because the commissioner is charged with weighing the evidence, we liberally and broadly construe the findings to uphold his decision." *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 331 (Iowa 2005).

With these principles in mind, we reject Yolanda's argument that the death benefits should have been apportioned equally among all of Raul's dependents. We first note that section 85.43 provides the commissioner "may make an order of record for an equitable apportionment" of benefits where the deceased employee leaves a surviving spouse and dependent children. See *Phillips v. Nat'l Trappers Ass'n*, 407 N.W.2d 609, 612 (Iowa Ct. App. 1987) (stating normally the word "may" implies permissive action or conduct); *Bertrand v. Sioux City Grain Exch.*, 419 N.W.2d 402, 403 n.1 (Iowa 1988) (noting deceased employee's minor child received no equitable apportionment of benefits where decedent also left a surviving spouse). Furthermore, as our courts have repeatedly recognized in a different context, an equitable division does not

necessarily mean an equal division. See *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995).

The agency determined that an equitable allocation of benefits in this case was one that approximated the amount of support provided by Raul to his dependents prior to his death. The record shows that Raul contributed approximately fifteen percent of his annual earnings to support Yolanda and her children, which is the percentage of benefits Yolanda's family will ultimately receive under the agency's allocation. It is not the role of the district court on judicial review, nor this court on appeal, to reassess the weight of this evidence. See *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394-95 (Iowa 2007). We therefore conclude substantial evidence supports the agency's allocation of benefits.

B. Iowa Code section 85.31(5).

Yolanda first claims Iowa Code section 85.31(5), which reduces the death benefits provided to nonresident alien dependents, violates her and her children's rights to equal protection of the law under the federal and state constitutions.⁷ Upon our de novo review of this constitutional challenge, *Ayers v. D & N Fence Co.*, 731 N.W.2d 11, 18 (Iowa 2007), we disagree for the reasons that follow.

In *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S. Ct. 1064, 1069, 30 L. Ed. 220, 226 (1886),⁸ the United States Supreme Court held the protection of the

⁷ Yolanda also claims section 85.31(5) violates her and her children's rights to due process of the law under the federal and state constitutions. However, it does not appear the district court decided such a claim in the judicial review proceedings. We therefore need not and do not address her due process claim on appeal. See *Meier*, 641 N.W.2d at 537.

⁸ Our courts typically deem the federal and state due process and equal protection clauses to be identical in scope, import, and purpose. *In re C.P.*, 569 N.W.2d 810, 811

fourteenth amendment is territorial and applies only to those persons within the territorial jurisdiction of the United States. This holding stems from the express language of the fourteenth amendment, which declares: “No state shall . . . deny to any person *within its jurisdiction* the equal protection of the laws.” U.S. Const. amend. XIV, § 1 (emphasis added); see also Iowa Const. art. I, § 6 (forbidding the General Assembly from granting “to any *citizen, or class of citizens*, privileges or immunities, which, upon the same terms shall not equally belong to all *citizens*” (emphasis added)). The Court later cautioned against exporting constitutional guarantees in *Johnson v. Eisentrager*, 339 U.S. 763, 771, 70 S. Ct. 936, 940, 94 L. Ed. 1255, 1262 (1950), where it observed that “in extending constitutional protections beyond the citizenry, the Court has been at pains to point out that it was the alien’s presence within its territorial jurisdiction that gave the Judiciary power to act.” See also *Plyler v. Doe*, 457 U.S. 202, 212-15, 102 S. Ct. 2382, 2392-94, 72 L. Ed. 2d 786, 796-98 (1982) (reaffirming that the due process and equal protections clauses of the federal constitution apply solely to citizens and resident aliens).

In view of the foregoing, Yolanda and her children, as aliens who do not reside and who have never resided in the United States,⁹ cannot invoke the equal protection clause of either the federal or state constitution in an effort to invalidate section 85.31(5). “The purpose of the equal protection clause is to

(Iowa 1997). Yolanda advances no reason why we should not do so here. Cf. *Callender v. Skiles*, 591 N.W.2d 182, 187 (Iowa 1999) (noting that although we may look to the United States Supreme Court’s interpretations of the federal constitution for guidance, we are not bound by those interpretations in determining the constitutionality of Iowa statutes challenged under our own constitution).

⁹ There was some evidence presented at the arbitration hearing that after Raul’s death one of Yolanda’s children may have been traveling into the United States to work. Yolanda, however, does not claim on appeal that this child was a resident alien.

protect persons and groups within United States jurisdiction from being singled out and subjected to hostile legislation.” *Pedrazza v. Sid Fleming Contractor, Inc.*, 607 P.2d 597, 600 (N.M. 1980) *abrogated on other grounds by Kent Nowlin Constr. Co. v. Gutierrez*, 658 P.2d 1116 (N.M. 1982) (citing *Pembina Consol. Silver Mining & Milling Co. v. Pennsylvania*, 125 U.S. 181, 8 S. Ct. 737, 31 L. Ed. 650 (1888)). Although Yolanda and her children may be subject to hostile legislation, “as non-resident aliens they are beyond the protective reach of the equal protection clause and outside of our ability to help their cause on constitutional grounds.” *Id.*

We reject Yolanda’s argument that we should view her challenge to the statute from the perspective of the decedent who was a resident of the United States. In support of her argument, she relies on *De Ayala v. Florida Farm Bureau Casualty Insurance Co.*, 543 So.2d 204 (Fla. 1989) and *Jurado v. PopeJoy Construction Co.*, 853 P.2d 669 (Kan. 1993). In finding statutes similar to section 85.31(5) unconstitutional, the courts in *De Ayala* and *Jurado* reasoned that the issue must involve a consideration of the constitutional rights of the deceased resident alien employee because the nonresident alien “dependents’ right of action is derivative of and dependent upon the employee’s contract of employment.” *Jurado*, 853 P.2d at 675; *see also De Ayala*, 543 So.2d at 206-07.

We do not find the reasoning in *De Ayala* and *Jurado* persuasive because in Iowa, our supreme court has explicitly stated that a “dependent’s right to workmen’s compensation is a distinct claim.” *McClure v. Employers Mut. Cas. Co.*, 238 N.W.2d 321, 329 (Iowa 1976) (citing 58 Am. Jur. *Workmen’s Compensation* § 167, at 689 (“A right to compensation conferred by statute upon

the surviving relatives or dependents of a deceased employee, on account of his death, is ordinarily treated as separate and distinct from the right to compensation vested in such employee by reason of the injury. The amount payable to the death beneficiaries never becomes a part of the estate of the deceased, and is not liable for his debts, but is the exclusive property of the beneficiaries.”)). We thus join the courts that have concluded nonresident alien dependents challenging the constitutionality of similar statutes lack the requisite standing to do so. See *Barge-Wagener Constr. Co. v. Morales*, 429 S.E.2d 671, 672-73 (Ga. 1993); *Jarabe v. Industrial Comm’n*, 666 N.E.2d 1, 3-4 (Ill. 1996); *Pedrazza*, 607 P.2d at 600-01; *Alvarez Martinez v. Industrial Comm’n*, 720 P.2d 416, 418 (Utah 1986).

This brings us to Yolanda’s final claim seeking to avoid the reduction in benefits mandated by section 85.31(5). She asserts section 85.31(5) “is inconsistent with the rights and powers given to a nonresident alien in Section 85.51.” Section 85.51 provides that where a deceased employee has left a nonresident alien dependent, the consul general, equivalent official, or duly appointed representative thereof

shall be regarded as the exclusive representative of such dependent or dependents, and said consular officials or their representatives shall have the same rights and powers in all matters of compensation which said nonresident aliens would have if resident in the state of Iowa.

Yolanda argues this section “clearly states nonresident aliens should have the same rights and powers in terms of compensation as if one resided in Iowa.” We do not agree.

We believe section 85.51 when read in its entirety simply designates the proper representative of a nonresident alien dependent in workers' compensation cases involving death benefits. See *Schadendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 337 (Iowa 2008) ("The interpretation of a statute requires an assessment of the statute in its entirety, not just isolated words or phrases."). To suggest the statute does anything more would lead to an absurd result, which must be avoided when interpreting statutes. *Id.* at 338 ("We look for a reasonable interpretation that best achieves the statute's purpose and avoids absurd results."). As the district court noted, were we to read section 85.51 in the manner urged by Yolanda, the right to death benefits would be established "in the listed consular officials, not in the dependent." Furthermore, as the district court also noted, "[i]f § 85.51 does mean what Yolanda says it means then it is in direct conflict with the provisions of section 85.31(5)," which lessens the amount of compensation provided to nonresident alien dependents.

"According to the principles of statutory construction, if two statutes conflict, courts must attempt to harmonize them in an effort to carry out the meaning and purpose of both." *Kelly v. State*, 525 N.W.2d 409, 411 (Iowa 1994). "When a general statute is in conflict with a specific one, the more specific statute generally prevails, irrespective of the time of its enactment." *Id.* Here, even assuming section 85.51 conflicts with section 85.31(5), section 85.31(5) must prevail because it is the more specific statute regarding the amount of compensation to be provided to nonresident alien dependents. We therefore reject Yolanda's arguments to the contrary.

IV. Conclusion.

We, like the district court, conclude the agency did not err in its equitable apportionment of survivors' benefits among the decedent's dependents. We further conclude that as nonresident aliens, Yolanda and her children do not have standing to assert their constitutional challenges to section 85.31(5). We also reject their claim that section 85.31(5) irreconcilably conflicts with section 85.51. The judgment of the district court affirming the appeal decision of the workers' compensation deputy commissioner is therefore affirmed.

AFFIRMED ON BOTH APPEALS.