

Noteworthy Decision Summary

Decision: WCAT-2006-00937

Decision Date: February 24, 2006

Panel: Marguerite Mousseau

Entitlement of child to benefits - Section 17(3) of the Workers Compensation Act – Item #54.00 of the Rehabilitation Services and Claims Manual, Volume I – Dependency - Reasonable Expectation of Pecuniary Benefit

This decision is noteworthy for its analysis of section 17(3) of the *Workers Compensation Act* (Act), in particular the statutory requirement of dependency under section 17(3) (f) for a child from a common law relationship, and of a reasonable expectation of pecuniary benefit under section 17(3) (i) of the Act.

On October 20, 1998 the worker suffered fatal injuries in a logging accident. He was 19 years old at the time of his death. In July 1999, a social worker contacted the Workers Compensation Board, operating as WorkSafeBC (Board), and informed a Board officer that the deceased worker had been in a common law relationship at the time of his death, and that there was a child. The Board officer denied the mother's application for children's benefits on the basis that he was unable to conclude that the child was financially dependent on the worker as of the time of his death.

The dependant's appeal was denied. Section 17 of the Act establishes the regime for the payment of benefits to the dependants of a deceased worker. Section 17(3) (f) applies to a child where there is no common law spouse eligible for payments under section 17. The application of section 17(3) (f) depends on two factors: the claimant's relationship to the deceased and the statutory requirement of dependency.

In this case, the first factor was satisfied as DNA test results established that the child was the son of the deceased worker. The panel, however, found that the child was not a dependant of the deceased at the time of the worker's death. The primary evidence that the deceased contributed to the support of his child consisted of statements made by the mother and the deceased worker's cousin to Board officers. The latter was problematic as the cousin indicated that he saw the worker give money to the mother at an address that the mother did not move to until several years after the worker had died. There were no receipts, no banking documents and no other documentary evidence which would substantiate that the deceased provided funds for the support of the child. In addition, the mother was receiving social assistance for herself and her child at the time of the worker's death and this was further indication that the child was not dependent on the worker's earnings at the time of his death.

The panel further considered whether the child was entitled to benefits under section 17(3) (i) of the Act. This section provides for compensation where a child is not a dependant but is found to have a reasonable expectation of pecuniary benefit. The panel found that there must be some reliable evidence of a reasonable expectation of pecuniary benefit. In this case the panel concluded that the evidence fell short of establishing either dependency or a reasonable expectation of pecuniary benefit. As a result, the child was not entitled to benefits under section 17 of the Act.

WCAT Decision Number : WCAT-2006-00937-RB
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Introduction

This appeal involves the entitlement of a child to benefits under section 17 of the *Workers Compensation Act* (Act). The mother of the child is acting as the child's representative. In this decision, I have referred to her as the appellant. She is unrepresented. The employer of the deceased worker who is the putative father of the child is participating in the appeal. It is represented by a management consultant who has made submissions on its behalf.

The appeal was filed with the Workers' Compensation Review Board (Review Board). On March 3, 2003, the Act was amended to replace the Appeal Division and Review Board with the Workers' Compensation Appeal Tribunal (WCAT). As this appeal had not been considered by a Review Board panel before that date, it has been decided as a WCAT appeal. (See the *Workers Compensation Amendment Act (No. 2), 2002*, section 38.)

The appellant requested an oral hearing of this appeal. An initial determination was made by WCAT registry staff that the appeal should proceed by way of written submissions. I am not bound by that decision, but after reviewing the documents on file and considering the issues to be determined, I agree that an oral hearing is not required in order to address this appeal. To the extent that further evidence might be of assistance in deciding this appeal, it would be documentary evidence which has previously been requested and is not available.

Issue(s)

The issue is whether the appellant's child is the child of the deceased worker and, if yes, whether he is entitled to benefits under section 17 of the Act.

Background

On October 20, 1998 the worker suffered fatal injuries in a logging accident. He was 19 years old at the time of the death and had been employed by the employer since July 20, 1998.

On October 26, 1998 a Board officer wrote to the mother of the deceased worker and expressed condolences on the loss of her son. In this letter, the Board officer also provided the following information:

It appears from the information on file, that your son was single with no dependents. Therefore, if this claim is found to be acceptable by the Workers' Compensation Board the only benefits payable under this claim would be funeral expenses and incidental costs relating to the death.

There is no correspondence on file from the worker's mother indicating that she corrected this information.

Information regarding the worker's employment indicates that the worker actually worked for only a portion of the period between the date he was hired and the date of his death. In a letter to the Board dated November 5, 1998, the employer's camp office manager provided a description of the deceased worker's work history with the employer. This work history indicates that the worker was first hired on July 21, 1998 and that he was employed as a chokerman that day. He was laid off the same day due to the fire season and recalled to work on September 10, 1998.

The worker worked from September 10 to October 5, 1998 and he was off from October 6 to 10. He returned to work on October 11 and the fatal accident occurred on October 20, 1998. The worker's employment with the employer had been at a remote location, which is where the accident occurred. The employer's report of injury states that the worker was paid \$24.77 per hour and had earned \$8,284.54 from that employer in the year prior to that accident.

In July 1999, a social worker contacted the Board and informed a Board officer that the deceased worker had been in a common law relationship at the time of his death. In the handwritten recording of the telephone conversation, which is dated July 14, 1999, the Board officer stated:

[Name of social worker] (Min. of Human Resources) called on behalf of [the appellant], alleged C/L [common-law] wife of [the worker]. They had apparently been together for three (almost four) years and have one child born Apr 17/98.

Called [name of social worker] Jul 15 to inquire whether [appellant] lived [with] worker at time of his death & to check on length of relationship as worker would have been barely 15 yrs of age when he began living [with] [name of appellant].

Not living together at time of death – "on and off relationship." for four months after child born. They fought a lot. [Name of appellant] on income assistance. [Name of worker] not named as father on B/C [birth certificate].

[reproduced as written]

The note provided an address for the appellant and indicated that there was no phone. A Board officer attempted to contact the worker by mail after receiving this information from the social worker.

In a letter to the appellant dated July 19, 1999, the Board officer expressed condolences on the death of her common-law husband. He stated that compensation is payable to dependants of a deceased worker where the death arose out of and in the course of employment and that he was enclosing an application for common-law spousal benefits form that she should complete if she felt she was entitled to benefits.

The officer said that, if the application was accepted, the applicant would be required to provide confirmed earnings information for the one and three year period prior to the date of death, as well as a certified copy of her birth certificate and she had to provide proof of financial dependency such as a joint mortgage, joint rental agreements, joint bank accounts, joint credit cards, utility bills etc. Apparently, no response was received to this letter.

Another message which indicates that it was written two years later, on September 24, 2001, refers to a call from the appellant. It states:

Received a call from [name of appellant] who claims that she and [name of worker] had a child together. The child's name is [name of child], DOB [date of birth] April 17, 1998. She says that she did not inquire about WCB because she did not realize that there may have been entitlement for their child. They were not living together at the time of his death. She tells me that [name of worker] would pay around \$300-\$400 per month to [name of child] in the form of cash so that she could buy clothes for him at the thrift store her mother works at.

A memo dated September 26, 2001 includes the information contained in the above noted message and notes that the deceased worker was not named as the father on the birth certificate of the appellant's child.

The same day, the adjudicator wrote to the appellant, enclosing an application for children's benefits with the letter. He stated that she should complete the enclosed form if she was receiving child support from the deceased worker at the date of his death. She should also provide a copy of the child's birth certificate and that this should be the long form certificate which indicates the names of the child's mother and father. If she was unable to provide this information, he would need some other form of confirmation that the child was the son of the deceased worker. The officer states that he would also appreciate the appellant providing him "with as much information as possible with regard to the level of support [the deceased worker] provided to yourself and to your son [name of son]."

The next document is a record of a telephone call from the mother of the deceased dated December 31, 2001, which indicates that she wanted to know what the declaration form should state. There is no indication as to the purpose of the declaration.

The next memorandum, which is dated May 6, 2002 states that the appellant has again contacted the Board indicating that she would like to pursue children's benefits for her son. The appellant informed the Board officer that she might have DNA testing done to determine the paternity of her son. The officer states that he informed the appellant that this information would be useful but not determinative. He said that he had asked the appellant to provide confirmation that the deceased worker was providing support to the child, in the event that the child was his. The appellant said that she thought she could provide statements from friends and relatives that would support her statement that the deceased worker was, in fact, supporting the child. The adjudicator noted that he had reviewed the file again that day, which was about two months after the appellant's last phone call, and no information had yet been provided. He stated he would take no further action until evidence was provided by the appellant regarding paternity and level of support.

A telephone memo dated September 16, 2002 indicates that there was a call from the appellant seeking to claim a child as a dependant. The message notes two names with phone numbers. These are the names of the mother of the deceased worker and a cousin of the deceased worker. It also notes "once every two weeks or everyday" and also provides the name and telephone number of the social worker who had contacted the Board in July 1999.

A subsequent memo dated September 19, 2002 indicates that the appellant called and spoke to a Board officer that day. He states that the appellant was responding to the correspondence sent by the claims adjudicator in September 2001. The appellant said that she had obtained a long form birth certificate which indicated that the deceased worker was the father of her son but she had no access to bank records etc., as the payments that the worker made were in cash. She said that the payments were made in cash "sometimes daily and sometimes every two weeks." She said that the deceased worker also sometimes brought over boxes of diapers or formula.

The appellant again provided the names of the mother of the deceased worker and his cousin and their phone numbers and she said that the family had never disputed that her child was the son of the deceased worker. The Board officer states that he asked the appellant if her social worker had been aware that the deceased worker was participating in her child's support. The appellant said that she was not sure and that she still had the same social worker but the social worker had never mentioned this one way or another.

The Board officer states that he told the appellant to send in what she had and she would conduct an appropriate investigation.

The appellant then sent a letter to the Board officer dated September 29, 2002 in which she gave the following information:

I am submitting this letter stating that the late [name of worker] was supporting his biological son [name of child] who was 6 months old at the time of death. [Name of worker] was supporting his son he would stop by every couple of weeks and visit drop off money (300 – 500\$) or food & clothes stuff for baby. The reason for [name of worker] name not being on the birth certificate is he was at camp at time of birth I had to file certificate for tax reasons.

[reproduced as written]

She also provided the names and telephone numbers of the mother and cousin of the deceased worker again.

I note that the birth certificate for the appellant's child does not identify a father. The appellant completed a form to amend the certificate and to add the deceased worker as the child's father in January 2002.

In a memorandum dated November 14, 2002, the adjudicator provided reasons for denying the application for children's benefits. In addition to the history of interactions with the appellant, he also notes that, in January 2002, he had spoken to an investigator with the Insurance Corporation of British Columbia who had called to find out whether the appellant had claimed any benefits from the Board in relation to the death of the deceased worker. The investigator had stated that the appellant had claimed that a young man who had died in another town was the father of her child.

The adjudicator states that, given his dealings with the appellant over the past four years, he has serious reservations regarding the paternity of her son. Even if her son was the son of the deceased worker, there was no evidence to suggest that he had contributed to the support of her child. He also noted that at the time of his accident, the worker was only 19 years of age, and he had only worked with the accident employer for approximately 10 weeks. The adjudicator said he found it hard to conceive that the worker would be making payments somewhere between \$600.00 and \$1,000.00 per month to the appellant. In addition, he noticed that the appellant collected benefits as a single parent and did not declare any support from any other source. He concluded by stating that the appellant's application was speculative and he would therefore deny benefits to her for the support of her son.

In the letter dated November 14, 2002, which forms the basis of this appeal, the Board officer informed the appellant that her application for children's benefits had been denied. The adjudicator said that he was unable to conclude that the appellant's son was financially dependent on the worker as of the time of his death.

In the notice of appeal submitted by the appellant on November 25, 2002, the appellant states that she thinks the decision is wrong because her son needs the benefits. She states that, if his father were alive, the child would have everything that he needs. She also says that the deceased worker worked hard after his son was born so that his child would have everything that he needs. She is a single mother on welfare and her son's future needs to be secure. If the worker were alive, her son would have a fund for college but she cannot afford that sort of thing.

In her notice of appeal, part 2, which is dated July 16, 2003, the appellant states that she wants her son to have the support that the deceased worker paid to the Board. She says that she has statements from the mother and sister of the deceased. In a letter dated February 16, 2004, the mother of the deceased worker describes the similarities between her son and the appellant's son and states that she is certain he is her grandson. There is also a letter written by the aunt of the deceased worker, dated January 7, 2004, which has also been signed by her mother (the grandmother of the deceased worker) and her husband, his uncle. She states that they are writing to say that they fully believe that the appellant's son is the child of the deceased worker. There is also a sworn declaration by the mother and sister of the deceased worker that they do not contest that the deceased worker is the father of the appellant's child.

In addition, the appellant submitted a letter dated February 26, 2004. She repeated the information in her notice of appeal. She said that the deceased worker wanted to provide for his son and that she was including a statement from the deceased worker's cousin.

This undated, typed statement is as follows:

I [name of cousin], Was witness to the fact that my cousin [name of deceased worker] came to [street address of appellant] at least twice a month to drop off money to [appellant].

The statement is signed by the cousin.

In June 2004 the appellant, her son, and both parents of the deceased worker provided specimens for DNA testing. The mother of the deceased worker submitted the test results to the Board on July 2, 2004 and the Board forwarded the results to WCAT. The document, which is undated, is titled "GENETIC TEST REPORT" and states that the probability that the deceased worker is the father of the appellant's child is 99.97%. A certification statement signed by Debra L. Davis, Ph.D – associate director, certifies

that the testing “was conducted in accordance with the standard protocol and the results contained herein are true and correct to the best of my knowledge.”

Unfortunately, this document was not disclosed to the employer’s representative when it was received by WCAT. Accordingly, the employer’s representative’s submission did not take into account this evidence.

In a submission dated December 30, 2004, the employer’s representative reviewed all of the evidence on the appellant’s file and submitted that it did not support a paternal relationship.

The employer’s representative also stated that under the agreement between the employer and the union, the employer was obliged to provide certain benefits to the worker which included insurances and medical coverage. According to the employer, the deceased worker had not completed any documentation that would have provided the appellant or a dependent child with any benefits to which they would be entitled if he was the father of the child.

This DNA test results were subsequently disclosed to the employer’s representative with an invitation to respond. The representative requested additional time to respond, which was granted. However, no submission or other correspondence has since been received.

Law and Policy

Section 17 of the Act establishes the regime for the payment of benefits to the dependants of a deceased worker. That section was amended effective June 30, 2002 pursuant to the *Skills Development and Labour Statutes Amendment Act, 2003* (Bill 37). Subject to limited exceptions, section 35.2 of the Act provides that the Act as amended by Bill 37 only applies to the death of a worker that occurred on or after June 30, 2002. Accordingly, the former provisions of the Act are applicable in this case and the relevant policies are contained in the *Rehabilitation Services and Claims Manual, Volume I* (RSCM I).

Section 1 of the Act defines “dependant” as:

"dependant" means a member of the family of a worker who was wholly or partly dependent on the worker's earnings at the time of the worker's death, or who but for the incapacity due to the accident would have been so dependent, and, except in section 17 (3) (a) to (h), (9) and (13), includes a spouse, parent or child who satisfies the Board that he or she had a reasonable expectation of pecuniary benefit from the continuation of the life of the deceased worker;

Section 17(3)(f) applies to a child where there is no common law spouse eligible for payments under the section 17. It states:

(3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:

...

(f) where there is no surviving spouse or common law spouse eligible for monthly payments under this section, and

(i) the dependant is a child, a monthly payment of a sum that, when combined with federal benefits to or for that child, would equal 40% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability;

...

subject, in all cases, to the minimum set out in paragraph (g);

Section 17(3)(i) establishes an exception to the general rule in section 17 that a child must be a "dependant" of the deceased worker in order to receive compensation. This section provides for compensation where a child is not a dependant but had a reasonable expectation of pecuniary benefit. It states:

i) where

- (i) no compensation is payable under the foregoing provisions of this subsection; or
- (ii) the compensation is payable only to a spouse, a child or children or a parent or parents,

but the worker leaves a spouse, child or parent who, though not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker, payments, at the discretion of the Board, to that spouse, child or children, parent or parents, but not to more than one of those categories, not exceeding \$115 [1998 amount] per month for life or a lesser period determined by the Board;

Item #54.00 of the RSCM I discusses the meaning of the definition of dependant in the Act. It provides in part:

Dependency does not exist simply because the claimant had the legal status of husband, wife, child, parent, etc. There must be evidence that, at the time of the worker's death, the claimant was actually dependent on the

deceased's earnings. Normally, this means that there must be evidence of sufficient actual support having been provided by the deceased to the claimant. This is so even though the deceased was, at the time of death, subject to a court order to maintain the claimant and the claimant was in need of support. Except in respect of the provision discussed in #61.00, a reasonable expectation of pecuniary benefit from the continuation of the life of the deceased is not itself sufficient to constitute dependency.

The above principles also apply where the claimant is a child. In the case of a child who was unborn at the date of the worker's death, once paternity is established, the fact that the deceased worker would have been under an obligation to support the child is evidence to warrant an inference that that person would have supported the child, and should be accepted as proof of dependency unless it is controverted by evidence to the contrary. If it is found that the deceased worker was supporting the mother at the time of death, that is also evidence from which an inference may be drawn that that person would have supported the child.

Item #61.00 states that an application for compensation from a spouse, child, parent, or other person on the grounds that he or she is a dependant of the deceased worker will automatically be considered under section 17(3)(i) if it is concluded that the person was not a dependant.

Reasons and Decision

The application of section 17(3)(f) of the Act depends on two factors: the claimant's relationship to the deceased and the statutory requirement of dependency. In this case, I accept the DNA test results as establishing that the appellant's son is the son of the deceased worker. Accordingly, the first factor has been satisfied.

The establishment of this familial relationship is not enough though to establish a right to compensation under section 17 the Act. Before any benefits are payable, it must also be shown that the deceased worker's child was a "dependant" (section 17(3)(f)) or had "a reasonable expectation of pecuniary benefit for the continuation of the life of the worker" (section 17(i)).

Turning to the question of whether the child was a dependant of the deceased worker as that is defined in section 1 of the Act, the child must be "wholly or partly dependent on the worker's earnings at the time of the worker's death" in order to meet the criterion of dependency.

The policy states that in order to establish that a family member was wholly or partly dependent on the worker's earnings, there must be evidence that "the claimant was actually dependent on the deceased's earnings" and that normally this requires

evidence that the deceased worker provided “sufficient actual support.” It is not enough to show that there was a legal obligation to pay, even under a court order, or that the child was in need of support.

This policy definition of dependency is consistent with dictionary definitions of the term.

The Oxford English Dictionary (2002) defines dependant as:

A person who relies on another, especially a family member, for financial support.

Blacks Law Dictionary (7th ed., 1999) at p. 449 defines “dependant” as:

One who relies on another for support; one not able to exist or sustain oneself without the power or aid of someone else.

In this case, the primary evidence that the deceased worker contributed to the support of his child consists of verbal statements made by the appellant to Board officers, the letter that she wrote to the Board on September 29, 2002 and the statement from the deceased worker’s cousin. There are no receipts, no banking documents and there is no other documentary evidence which would substantiate that the deceased worker provided funds to the appellant for the support of the child.

The note signed by the deceased worker’s cousin is problematic as evidence of financial support in that it is very vague as to the amounts involved. The most significant difficulty with this statement, however, is that the file records indicate that the appellant did not move to the address at which the cousin states he saw the worker give money to the appellant until several years after the worker had died.

In her application for children’s benefits, the appellant states that at the time of the worker’s death, October 1998, his child was residing at an address at B Terrace in community A. The social worker who contacted the Board in July 1999 stated that the appellant was, at that time, living at G Way in community A. In her application for children’s benefits dated March 7, 2002 she gave her own address at that time as C Road in community A.

The address provided by the cousin as the address at which he saw the worker leave money for the appellant appears for the first time as the appellant’s address in a letter to the Board dated September 29, 2002, four years after the death of the worker. Accordingly, this statement does not assist in establishing actual financial support by the worker.

Other evidence is also inconsistent with a conclusion that the deceased worker was paying support for his child at the time of his death. It appears that the worker did not take steps to provide for health or other benefits for his son under the benefit plans

available through his employment. This is inconsistent with an assumption of financial responsibility for the child.

In addition, the appellant was receiving social assistance for herself and her child at the time of the worker's death. That the worker was not named as the father of the child in the original birth certificate would assist the appellant in obtaining social assistance as a single parent – for her and the child. I understand the appellant's position that these benefits are inadequate but the fact that she was in receipt of benefits intended to sustain both herself and the child is further indication of the child not being dependant on the worker's earnings at the time of his death.

There are also concerns regarding the worker's capacity to make support payments for most of the period between the birth of the child and the worker's death. There is no information regarding the worker's employment situation between April 17, 1998 and July 1, 1998 when he was hired by the employer. Accordingly, there is no evidence of a source of income during that period that would be consistent with his paying \$600.00 to \$1000.00 a month for the support of his child. In addition, he worked only on July 1, 1998 and did not return to work until September 10, 1998. As a result, during this period as well, his ability to pay \$600.00 to \$1000.00 a month is questionable.

Once he was earning money, between the time that he returned to work on September 10, 1998 and the date of his death on October 20, 1998, he was in the camp for all but four days off, according to the employer's records. Accordingly, it would have been very difficult for him to stop by the appellant's home on a weekly or daily basis to give her cash or other goods.

The statements of the appellant constitute the primary evidence that the deceased worker was paying for the support of his child. It is in the interest of the appellant to make this statement but that is not a reason, in itself, to reject the appellant's evidence. In this case though, there is an absence of any documentary evidence or other reliable evidence to corroborate the appellant's evidence. In addition, the surrounding circumstances indicate that it would have been very difficult for the worker to make the payments described by the appellant. These circumstances include his intermittent employment between the birth of the child and his death and that, when he was working, he was at a remote logging camp – which would make it difficult for him to make cash payments on a daily or weekly basis to the appellant who resided in the Lower Mainland. In addition, his decision not to identify his child as a dependant for medical or other insurance and the receipt by the appellant of social assistance benefits for herself and the child all indicate that the worker was not paying "sufficient actual support" to establish the child as his dependant.

In view of this evidence, I am unable to accept that the child of the deceased was a dependant, as that is defined by the Act and the policy, at the time of the worker's death.

I have also considered whether the worker's child is entitled to benefits under section 17(3)(i) of the Act. This section provides for compensation where a child is not a dependant but is found to have a reasonable expectation of pecuniary benefit. Given the previously expressed concerns regarding the reliability of the evidence provided with respect to child support, I have considered obligations imposed under family law legislation and whether these, in themselves, may be sufficient to establish a reasonable expectation of pecuniary benefit.

Section 88 of the *Family Relations Act* sets out the obligation of a parent to support a child. It states:

Each parent of a child is responsible and liable for the reasonable and necessary support and maintenance of the child.

The requirement to establish that a child is a "dependant" or has a "reasonable expectation of pecuniary benefit" in order to receive benefits under the Act seems inconsistent with the clear obligation of a parent to support a child under the *Family Relations Act* based solely on familial relationship. This raises a question as to whether the objectives of the *Family Relations Act* or other family law statutes should be considered in interpreting these provisions of the Act, and in particular, the term "reasonable expectation of pecuniary benefit." Should it be considered that a child has a reasonable expectation of pecuniary benefit so long as there is a legal obligation to support the child, even if there is no evidence of actual support?

This interpretation is problematic in that it is not supported by the plain meaning of the provisions in the Act. The definition of "dependant" expressly requires evidence that there was dependence on the worker's earnings and thus a loss of income support, not merely a legal obligation to support. To find otherwise is to ignore the phrase "independent on the worker's earnings."

Similarly, the inclusion of the requirement of a "reasonable expectation of pecuniary benefit" under section 17(3)(i) indicates that something more than a familial obligation must be established in order for compensation to be paid under the Act. If it were sufficient to establish a parental relationship between the worker and the child in order for the child to receive benefits under the Act, there would be no need to include the additional criteria of dependency or expectation of pecuniary loss. In order to give effect to these terms it seems that there must be some evidentiary basis for a finding of dependency or expectation of pecuniary loss; a legal obligation to support does not suffice in either case.

This approach is also supported in judicial decisions under family compensation legislation. Although WCAT is not bound by legal precedent, it is often useful to look to the courts to assist in interpreting statutory terms, particularly when there is no policy that specifically provides direction on that interpretation. In this case, I have found it

useful to consider the decision of the British Columbia Court of Appeal in *Paruk v. Nygren* (1972), 25 D.L.R. (3rd) 377, the BC Court of Appeal. That case involved compensation for the loss of a parent under what was then the *Families' Compensation Act*. The court discussed the basis for establishing an expectation of pecuniary loss resulting from the death of a parent and stated that the evidence of pecuniary benefit may be slight, but there must be some tangible evidence to support the expectation. Although the present case differs in that compensation for a child is at issue, I consider that the interpretation of this phrase is still useful. In this regard, the court stated:

The question still has to be determined whether there was a reasonable expectation in these circumstances, which must, in my view, be established on a balance of probabilities arising in the evidence. That expectation may be supported, in my view, by slight evidence; but there must be some tangible evidence, established, arising either from the boy's contribution to the family, in one way or another, or his life style, or a combination of the two, when taken vis-a-vis his attitudes and his relations with his family.

In this case, the worker left no direct evidence of such an intention. Although there had been very little time in which to make a statement to this effect, he did have an opportunity to signal his intention by including the child for coverage under the employer's medical insurance or other benefit plan when he was hired. According to the employer's representative's submission, he did not do this. I also do not find that the evidence of the child's mother is sufficient to establish this intent, given the concerns previously expressed about this evidence.

In view of all of the above, I find that there must be some reliable evidence of a reasonable expectation of pecuniary benefit in order to satisfy that criterion. I find that the evidence in this case falls short of establishing either dependency or a reasonable expectation of pecuniary benefit. As a result, I find the worker's child is not entitled to benefits under section 17 of the Act.

Conclusion

I vary, in part, the decision of the Board officer dated November 14, 2002. I find that the appellant's child is the child of the deceased worker but I find that the child is not entitled to benefits under section 17 of the Act.

Marguerite Mousseau
Vice Chair

MM/gw