

SYLLABUS:

Under Section 4123.60, Revised Code, the Industrial Commission, after satisfactory proof, may award and pay compensation for a percentage of permanent partial disability to the dependents of a deceased employee, who has died from an occurrence not covered by the workmen's compensation law, in an amount not exceeding the compensation which the employee might have received but for his death, where the employee has filed an application for the determination of a percentage of permanent partial disability.

Columbus, Ohio, June 28, 1963

Hon. Homer H. Hickling
Chief Deputy Administrator
Legal Section
The Industrial Commission of Ohio
Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your attention is directed to the following provision in R. C. Section 4123.57 (B):

"When an award under this division of this section has been made prior to the death of an employee, all unpaid installments accrued or to accrue under the provisions of the award are payable to the widow, or if there is no widow surviving, to the dependent children of such employee,"

"Your attention is further directed to the provisions in R. C. Section 4123.60 permitting the Industrial Commission to make awards in cases where the death of the employee is from causes other than injury and specifically to the following provision:

"If the decedent would have been lawfully entitled to have made application for an award at the time of his death the commission may, after satisfactory proof to warrant an award and payment, award and pay an amount, not exceeding the compensation which the decedent might have received, but for his death, for the period prior to the date of his death, to such of the dependents of the decedent, or for services rendered on account of the last illness or death of such decedent, as the commission deter-

mines in accordance with the circumstances in each such case, . . . '

"In a claim which has been allowed, and in which the claimant has filed an Application for the Determination of Percentage of Permanent Partial Disability at the proper time and a medical rating as to the degree of percentage of permanent partial disability would have been proper, but in which no finding or award as to percentage of permanent partial disability is made prior to his death, from a cause unrelated to injury, the Industrial Commission has requested that I ask for your opinion as to whether the Commission, even though prevented from paying compensation for percentage of permanent partial disability to the widow under R. C. Section 4123.57 (B), because no award was made prior to the death of the decedent, could, upon the filing of a timely application by the widow, pay compensation for percentage of permanent partial disability to her under the provisions of R. C. Section 4123.60."

I agree with the conclusion set forth in your letter of request that Section 4123.57 (B), Revised Code, has no application to the fact situation presented in your inquiry. Section 4123.60, Revised Code, reads in part as follows:

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"In all cases of death from causes other than the injury or occupational disease for which award has theretofore been made on account of temporary, or permanent partial, or total disability, in which there remains an unpaid balance, representing payments accrued and due to the decedent at the time of his death, the commission may, after satisfactory proof has been made warranting such action, award or pay any unpaid balance of such award to such of the dependents of the decedent, or for services rendered on account of the last illness or death of such decedent, as the commission determines in accordance with the circumstances in each such case. If the decedent would have been lawfully entitled to have made application for an award at the time of his death the commission may, after satisfactory proof to warrant an award and payment, award and pay an amount, not exceeding the compensation which the decedent might have received, but for his death, for the period prior to the date of his death, to such of the dependents of the decedent, or for services rendered on account of the last illness or death of such decedent, as the commission determines in accordance with the circumstances in each such case, * * *"

In the case of *State, ex rel. Spiker, Admx., v. Industrial Commission*, 141 Ohio St., 174, the Supreme Court of Ohio had occasion to rule on the application of Section 1465-83, General Code, which was the statute which preceded the present Section 4123.60, Revised Code. The second paragraph of the syllabus of this case reads as follows:

"2. Under Section 1465-83, General Code, Industrial Commission may, at its discretion, pay the dependents of an injured workman who died from any cause other than the compensable injury the unpaid balance of an award accruing during the lifetime of the workman, *or* if the injured workman would have been entitled to an award in his lifetime the commission may at its discretion award and pay to such dependents what the injured workman would have been entitled to receive out of the state insurance fund during his lifetime."

(Emphasis added)

In the opinion of Judge Turner the following language is found at page 177:

"The foregoing section provides that where the death of the workman has resulted *from a cause other than the injury for which an award was or might have been made to the workman during his lifetime the commission may at its discretion* pay an unpaid balance of the award made to the workman during his lifetime or may make an award after the death of the workman and pay same to the dependents, but, in either event the amount to be paid is limited to what the workman might have received during his lifetime."

Prior to July 8, 1931 this statute did not contain provision for the application by a deceased employee's dependents for an award that the decedent would have been lawfully entitled to, but had never made. However, prior to that date the law did provide that in all cases of death from causes other than injury for which an award had theretofore been made and in which there was an unpaid balance remaining, the unpaid balance would be paid to the dependents of the decedent. Thus, we find a manifested legislative intent to broaden the coverage of the statute by the July 8, 1931 amendment.

Accordingly, it is my opinion and you are advised that under Section 4123.60, Revised Code, the Industrial Commission, after

satisfactory proof, may award and pay compensation for a percentage of permanent partial disability to the dependents of a deceased employee, who has died from an occurrence not covered by the workman's compensation law, in an amount not exceeding the compensation which the employee might have received but for his death, where the employee has filed an application for the determination of a percentage of permanent partial disability.

Respectfully,
WILLIAM B. SAXBE
Attorney General