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## WORKMEN'S COMPENSATION—SECTION 1465-83, AS AMENDED BY 89th G. A. APPLICABLE TO CERTAIN CASES.

*SYLLABUS:*

*The amendment to Section 1465-83, General Code, as enacted by the 89th General Assembly, applies to all cases where the death of a workman who was injured in the course of his employment, and dies as a result of something other than the injury, when the death occurs subsequent to the effective date of said amendment.*

COLUMBUS, OHIO, July 23, 1935.

*The Industrial Commission of Ohio, Columbus, Ohio.*

DEAR SIRs:—Your recent request for my opinion reads as follows:

“Section 1465-83 G. C. was amended by Amended Senate Bill 186, 114 Ohio Laws page 26, by adding thereto the following provision:

‘And if the decedent would have been lawfully entitled to have made application for an award at the time of his death the commission may, at its discretion, after satisfactory proof to warrant an award and the payments hereinafter mentioned, 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 the services rendered on account of the last illness or death of such decedent, as the commission shall determine in accordance with the circumstances in each such case, provided, however, that such payments may be made only in cases in which application for compensation was made in the manner required by this act during the life-time, or within six months after the death, of such injured person, and provided, further, that such payments may be made only in the event that the injured person dies within two years of the date of the last award preceding his death, if any award had been made in the decedent's lifetime, or within two years of the date of his injury, if no such award had been made.’

“There are certain claims now pending before the Commission,

where employees were injured before the effective date of the above amendment and have died subsequent thereto. Dependents of these employees have applied for compensation, which would have been paid to the workmen had they lived. Assuming that all the conditions specifically set forth in the amendment have been met, has the Industrial Commission of Ohio authority to allow such applications filed by the dependents of employees who were injured prior to the effective date of the present Section 1465-83 G. C., but whose deaths occurred subsequent thereto? Should the amendment be construed to include only those claims arising out of injuries happening on and following its effective date?"

Prior to the enactment of the above quoted amendment by the 89th General Assembly (114 Ohio Laws), Section 1465-83, General Code, read as follows:

"The benefits in case of death, shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents as may be determined by the industrial commission of Ohio, which may apportion the benefits among the dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made, if the commission deems it proper, and shall operate to discharge all other claims therefor. The dependents or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the commission.

"In all cases of death where the dependents are a widow and one or more minor children, it shall be sufficient for the widow to make application to the commission on behalf of herself and minor children; and in cases where all of the dependents are minors, the application shall be made by the guardian or next friend of such minor dependents.

"In all cases of death from causes other than the injury for which award had 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 decedent at the time of his death, the commission may at its discretion, 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 shall determine in accordance with the circumstances in each such case."

Under the section as it then existed, if an employee had been injured in the course of his employment, had filed an application for compensation from the state insurance fund and the Industrial Commission had made an award of compensation to him, and he afterwards died from causes other than the injury, and at the time of his death there remained "an unpaid balance, representing payments accrued and due decedent at the time of his death," the commission could, at its discretion, pay such unpaid portion of the award to dependents or for services rendered on account of the last illness or death of the decedent. If a claim had not been filed or no award had been made and there were no unpaid amounts of any award which had theretofore been made which had accrued at the time of the decedent's death, then there was no authority for the industrial commission to make payment to any one. (*Industrial Commission vs. Terrell*, 120 Ohio St., 59.)

By virtue of the amendment by the 89th General Assembly provision was made whereby application could be made even after the death of the decedent, if made within two years of the date of the last award preceding his death, or within two years after the date of the injury if no award had ever been made, and within six months after the death of "such injured workman", and have the commission make an award.

Section 26, General Code, reads as follows:

"Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceedings, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

In my opinion, this amendment to Section 1465-83, General Code, does to a certain extent relate to a remedy given under the Workmen's Compensation Law for injuries sustained in the course of the injured workman's employment. It is true that Section 26, *supra*, provides that no such amendment, if it relates to the remedy, shall affect pending actions or proceedings. That a claim before the Industrial Commission is a pending proceeding within the meaning of said section cannot be disputed. (*Industrial Commission vs. Vail*, 110 Ohio St., 304.)

However, the provisions of the Workmen's Compensation Law as it was originally enacted provided compensation for injured workmen during the entire period of disability, which, of course, would cease at the time of his death. But if the injured workman had not promptly asserted his rights, or if the matter had been delayed for some reason by the commission, there was

no provision whereby compensation could be paid for the disability contemplated by the compensation act in the event the injured workman died previous to the making of an award therefor. The amendment by the 89th General Assembly did not increase the amount of compensation provided by law, it only made provision for a method by which the compensation contemplated by the act could be paid. It makes no increase in the amount of compensation contemplated by law but provides the commission with authority whereby that amount can be determined even after the death of the injured workman. This amendment merely creates a new right whereby compensation can be received for the disability in the manner originally contemplated by the Workmen's Compensation Law. The right to so receive comes into existence at the time of the death of the injured workman. The commission has always had the power to make an award or a determination of the amount up until the time of the death of the workman and this amendment only continues that power after such death.

I do not believe that this affects the remedy of a "pending action" sufficient to bring it within the category of those cases mentioned in Section 36, *supra*, but rather that this is a new provision to be made applicable to all claims after the effective date of the amendment.

It may be contended with considerable force, that, by the language of Section 1465-83, General Code, as amended, it is expressly provided that the amendment shall apply not only to cases where the injured workman had not at the effective date of the amendment made application, but to those cases where application had been made but had not at the time of the workman's death been acted upon. The statute obviously spoke from the effective date, and by the words in the opening phrase "if the decedent would have been lawfully entitled to have made application for an award at the time of his death," the section may well be said to expressly be outside any of the provisions of Section 26, *supra*, which might otherwise be applicable.

It is, therefore, my opinion that the amendment to Section 1465-83, General Code, as enacted by the 89th General Assembly, applies to all cases where the death of a workman who was injured in the course of his employment is the result of something other than the injury, when the death occurs subsequent to the effective date of said amendment.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*