

Workmen's Compensation—Invalids.

An invalid brother over the age of 16 years, if actually dependent on a deceased brother, is entitled to compensation, as a minor dependent.

June 30, 1917.

Industrial Accident Board,
Helena, Montana.

Gentlemen:

You have submitted to me your files in connection with the claim of P. F. Morgan, to compensation under the Act.

It appears that Edward Morgan was accidentally killed on July 12th, 1916, while in the employ of the Butte Central Mining & Milling Company and that his death was caused by an accident arising out of and in the course of his employment. Claimant is a brother of the deceased and there were left surviving no beneficiaries or major dependents. The claimant is a middle aged man, but bases his right to compensation upon the fact that for several years previous to the death of his brother, he had been unable to do any work on account

of the injuries to his head, which he sustained in 1900, and that he had thereby become physically and mentally incapacitated, and at the time of the injury, he was actually dependent upon his brother for his support. The insurance carrier has protested against the payment of compensation for the reason that the claimant is a brother of the deceased and was at the time of the injury, over sixteen years of age.

In case the injury causes death, and there are no beneficiaries or major dependents, thirty per cent of the wages received at the time of the injury shall be paid as compensation to minor dependents. (See Section 16 (d)).

Section 6 (n), 7 (a) and 6 (o) of the Act, provide as follows:

Section 6 (n). "Minor dependent" means if there be no beneficiary as defined in Section 6 (1), and if there be no major dependent as defined in Section 6 (m), the brothers and sisters, if actually dependent upon the decedent at the time of his injury."

Section 7. (a) "In computing compensation to children and to brothers and sisters, only those under sixteen years of age, or invalid children over the age of sixteen years shall be included, and, in the case of invalid children, only during the period in which they are under that disability (within the maximum time limitations elsewhere in this act provided), after which payment on account of such person shall cease. Compensation to children, or brothers or sisters (except invalids) shall cease when such persons reach the age of sixteen years."

Section 6 (o). "'Invalid' means one who is physically or mentally incapacitated."

The question of dependency is determined as of the date of the happening of the accident to the employe. Section 12 (c) and *Dazy v. Apponaug Co.* (R. I.), 89 Atl. 160.

It would appear from examination of the first sentence in Section 7 (a), above, that brothers and sisters would be entitled to compensation only in case they were under sixteen years of age and that the payment of compensation to invalids applies only to children over the age of sixteen years; but by the second sentence in this section, the words "except invalids", in parentheses, are inserted, not after the word "children", but after "children, or brothers or sisters", and from this sentence it would appear that the exception in favor of invalids, over sixteen years of age, should apply to brothers and sisters, as well as to children. Both of these sentences, in the same section, are apparently conflicting.

It was said, in *Matecny v. Vierling Steel Works*, 187, Ill. App. on page 455:

"In determining this question, we must look to the entire act and ascertain, if possible, the intent and purpose of the Legislature in enacting the law. It is always necessary, first, to understand the subject of an act and the object to be accomplished by it. Once the subject matter is clearly as-

certained and the general legislative purpose discovered, a key is thereby furnished which will enable one to correctly interpret all of the constituent and subordinate elements found in the act.’”

In *Boyd v. Pratt*, 130 Pacific Reporter, 371, the court had under consideration the following statute:

“If a workman * * * leaves a dependent * * * a monthly payment shall be made to each dependent equal to 50 per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed \$20 per month. * * * If the workman is under the age of twenty-one years and unmarried at the time of his death the parents or parent of the workman shall receive \$20 per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.’”

The lower court held that the dependent mother of an employe nineteen years of age, when he was killed, was entitled to an allowance of twenty dollars a month, so long as her dependent condition continued and not merely until decedent would have arrived at the age of twenty-one years. In the opinion, the court used the following language:

“We think the interpretation of the statute adopted by the lower court is correct. It is quite clear to us that the Legislature must have intended that the first clause quoted should apply to cases of dependency, while the last clause refers only to cases of nondependency. This construction is in keeping with the spirit and object of the law; that is, to protect the injured, and to save dependents from becoming public charges. To hold that an allowance given because of dependency is to be cut off arbitrarily at a time when the deceased would have attained the age of 21 years would defeat the humane purposes of the statute, for the dependency would not then cease, but might continue over a period of years.”

This Washington case is not in point in connection with the interpretation of section 7 (a) of our act, yet it indicates the general tendency of the courts to give a liberal construction to the Workmen’s Compensation Act.

It will be noticed that Section 6 (o) in defining an invalid, is not restricted to children, but broad enough to include brothers and sisters as well, and under Section 6 (n) a brother or sister, if actually dependent, is considered as a minor dependent. I can see no purpose in making a distinction between an invalid brother or sister and an invalid child. One is as much a charge upon society as the other, in case of the death of the one upon whom he or she is dependent for support. The only case under our Act, in which a brother can get compensation, is in the event that there are no beneficiaries or major dependents, or in other words, in case he has no father or mother

living. If the contention of the insurance company is correct, an invalid brother over sixteen, having no father or mother to support him, and actually dependent upon a deceased employe for the necessities of life, would, in case of the death of such employe, be thrown upon society, without any compensation. I do not believe our Workmen's Compensation Act should receive any such interpretation.

Respectfully,

S. C. FORD,

Attorney General.