Ohio Industrial Commission RECORD OF PROCEEDINGS

Claim Number: 19-134031 Claims Heard LT-DTH-OSIF-COV PCN: 2191491 Christopher R. McDonald

Claims Heard: 19-134031

CHRISTOPHER R. MCDONALD C/O HUNTER R. MCDONALD, CHILD 6520 WILSON LN NASHPORT OH 43830-9697

Date of Injury: 4/08/2019 Risk Number: 925649-0 Date of Death: 4/08/2019

This claim has been previously allowed for: DEATH CLAIM.

This matter was heard on 09/05/2023 before the Industrial Commission pursuant to the provisions of R.C. 4121.03, 4123.511 and 4123.52 on the following:

APPEAL of SHO order from the hearing dated 08/07/2019, filed by Administrator on 08/28/2019. Issue: 1) Death Allowance

Notices were mailed to the Dependents, the Employer, their respective representatives and the Administrator of the Bureau of Workers' Compensation not less than 14 days prior to this date, and the following were present for the hearing:

 APPEARANCE FOR THE DEPENDENTS:
 Mr. Graham; Mr. McClelland; Ms. Carpenter

 APPEARANCE FOR THE EMPLOYER:
 Mr. Wolf; Ms. Maddox (via Webex)

 APPEARANCE FOR THE ADMINISTRATOR:
 Mr. Sanford

HEARD BY: Mr. Hughes, Mrs. Hottinger, Mr. Massey

09/05/2023 - It is the decision of the Industrial Commission the Administrator's Appeal, filed 08/28/2019, is taken under advisement for further review and discussion and an order be issued without further hearing.

09/05/2023 - After further review and discussion, it is the decision of the Commission the Administrator's Appeal, filed 08/28/2019, is granted and the Staff Hearing Officer order, issued 08/15/2019, is modified.

The Commission finds the issue of the Administrator's Appeal, filed 08/28/2019, from the order of the Staff Hearing Officer, issued 08/15/2019, is before the Commission pursuant to State ex rel. McDonald v. Indus. Comm., 2023-Ohio-1620. As set forth more fully in the Staff Hearing Officer order, issued 07/27/2023, McDonald, supra, directed the Commission to vacate its order issued 10/30/2019, and to consider and determine whether Amanda Carpenter was a member of the family of the deceased Injured Worker ("Decedent") under R.C. 4123.59(D), and if so, the extent of her dependency.

It is the decision of the Commission to grant the FROI-1 First Report of an Injury, Occupational Disease or Death, the C-5 Application for Death Benefits and/or Funeral Expenses, and the C-6 Application for Accrued Compensation, all filed 04/23/2019, to the extent of this order.

The Commission finds the Decedent's death on 04/08/2019 resulted from an injury sustained in the course of and arising out of employment. Specifically, the Decedent was working in an unsecured ditch when the walls collapsed, causing his death. In support of its finding, the Commission relies upon the Certificate of Death, dated 04/10/2019, and the Coroner Report, dated 05/06/2019.

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Medical, hospital, and funeral expenses are ordered to be paid in accordance with the rules and regulations of the Bureau of Workers' Compensation.

The Average Weekly Wage is set at \$1,720.65, based upon the wage information on file and the BWC Wage Calculation Worksheet, dated 05/20/2019.

Death benefits are to be paid at 66 2/3% of the Average Weekly Wage, not to exceed the Statewide Average Weekly Wage for the year of death. The weekly rate will not be less than 50% of the Statewide Average Weekly Wage for the year of death.

It is found the following people were wholly dependent on the Decedent for support at the time of death, and are collectively entitled to benefits in the amount of \$950.00 per week, which is apportioned as follows:

Amanda Carpenter, born on 09/17/1988, the Decedent's partner and fiancée, is to receive \$316.67 per week;

Hunter R. McDonald, born on 10/04/2011, the Decedent's child, is to receive \$316.67 per week, and this payment is to be made in the care of Amanda Carpenter, his mother;

Aubrey E. McDonald, born on 02/29/2016, the Decedent's child, is to receive \$316.67 per week, and this payment is to be made in the care of Amanda Carpenter, her mother.

In *McDonald*, *supra*, the Court held that marital status is not determinative of whether a person is eligible to receive death benefits under R.C. 4123.59(D). The question, rather, is whether the person is a "member of the family of the deceased employee." The Court indicated that R.C. 4123.95, calling for liberal construction "in favor of employees and the dependents of employees", pertains to that determination.

In awarding benefits to Ms. Carpenter, the Commission finds that although she was not married to the Decedent, she was a member of his family at the time of his death, and that she was wholly dependent on him for support.

In support of these findings, the Commission finds the Decedent and Ms. Carpenter began residing together in 2009, first in apartments and then in a jointly owned home; the couple became engaged to be married in late 2010, exchanging rings which they wore; the couple parented and raised two children who resided with them in their home; the Decedent and Ms. Carpenter each had a life insurance policy naming the other as sole beneficiary; the Decedent and Ms. Carpenter were jointly liable for their home mortgage, as well as for vehicle payments and multiple credit card accounts. The Decedent was the primary earner for the household, with Ms. Carpenter caring for the children and working an average of eight hours per week outside the home; and per Ms. Carpenter, the couple had every intention of being married if not for the fatal injury. The Commission relies upon Ms. Carpenter's affidavit, dated 04/22/2019, and her testimony at hearing.

Payment of Ms. Carpenter's share is to continue without suspension unless future facts and circumstances warrant the stopping of the award. In the event Ms. Carpenter marries, it is ordered she notify the Bureau of Workers' Compensation of the date of the marriage, at which time a supplemental order will be published awarding her a final lump sum payment as provided by R.C. 4123.59. When applicable, the amount of Ms. Carpenter's weekly award will be reapportioned to the minor children.

Payment of each minor child's share of benefits will continue until the child reaches the age of 18 years. It is ordered the child or guardian notify the Bureau of Workers' Compensation at that time. If the child enrolls as a full-time student in an accredited educational institution, payment of benefits

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will be reinstated and made directly to the child upon submission of proof of enrollment. When the enrollment is discontinued, the child shall immediately notify the Bureau of Workers' Compensation for appropriate action. In no event will the child be eligible for benefits after reaching the age of 25 years.

All of the evidence was reviewed and considered in rendering this decision.

ANY PARTY MAY APPEAL AN ORDER OF THE COMMISSION, OTHER THAN A DECISION AS TO EXTENT OF DISABILITY, TO THE COURT OF COMMON PLEAS WITHIN 60 DAYS AFTER RECEIPT OF THE ORDER, SUBJECT TO THE LIMITATIONS CONTAINED IN R.C. 4123.512.

Typed by: dmg Date Typed: 09/05/2023

The action is based upon the motion made by Mr. Hughes, seconded by Mrs. Hottinger, and voted on as follows:

Yes

James M. Hughes Yes Chairman

Electronically signed by James M. Hughes

Cheri L. Hottinger Commissioner

Electronically signed by Cheri L. Hottinger

Daniel J. Massey Commissioner

Electronically signed by Daniel J. Massey

ATTESTED TO BY:

Findings Mailed: 09/16/2023

Executive Director

Electronically signed by Tim Adams

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of one of the parties, please notify the Industrial Commission.

19-134031 Christopher R. McDonald c/o Hunter R. McDonald, Child 6520 Wilson Ln Nashport OH 43830-9697 ID No: 21256-91 Graham & Graham PO Box 340 Zanesville OH 43702-0340 Yes

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19-134031 Christopher R. McDonald c/o Aubrey E. McDonald, Child 6520 Wilson Ln Nashport OH 43830-9697

19-134031 Christopher R. McDonald c/o Amanda Carpenter, Other 6520 Wilson Ln Nashport OH 43830-9697

Risk No: 925649-0 J & J Schlaegel Inc 1250 E US Highway 36 Urbana OH 43078-8002 ID No: 900-80 Sedgwick Claims Management Services PO Box 884 Dublin OH 43017-6884

ID No: 20752-91 Kegler Brown Hill & Ritter 65 E State St Ste 1800 Columbus OH 43215-4294

ID No: 219689-91 Hahn Loeser & Parks, LLP 200 Public Sq Ste 2800 Cleveland OH 44114-2303

> ID No: 9994-05 BWC, Law - Columbus Attn: Director Of Legal Operations 30 W Spring St # L-26 Columbus OH 43215-2216

BWC, LAW DIRECTOR

NOTE: INJURED WORKERS, EMPLOYERS, AND THEIR AUTHORIZED REPRESENTATIVES MAY REVIEW THEIR ACTIVE CLAIMS INFORMATION THROUGH THE INDUSTRIAL COMMISSION WEB SITE AT <u>www.ic.ohio.gov</u>. ONCE ON THE HOME PAGE OF THE WEB SITE, PLEASE CLICK ICON AND FOLLOW THE INSTRUCTIONS FOR OBTAINING A PASSWORD. ONCE YOU HAVE OBTAINED A PASSWORD, YOU SHOULD BE ABLE TO ACCESS YOUR ACTIVE CLAIM(S).

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