



Workers' Compensation Report

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A New Direction for Section 7(a) Survivor Benefits

The Illinois Appellate Court First District recently issued a decision in the case of *Kevin Cronk v. Illinois Workers' Compensation Comm'n*, 2024 IL App (1st) 221878WC. The court reversed the decision of the circuit court that confirmed the Commission's decision denying survivor benefits under Section 7(a) of the Act. Relying on the case of *Drives, Inc. v. Industrial Comm'n*, 124 Ill. App. 3d 1014 (1984), the court reasoned that the intent of Section 7(a) was for it to be broadly applied to dependent children of the deceased worker.

Factual Background

In the *Cronk* case, the claimant filed a claim under the Workers' Compensation Act seeking survivor benefits after his father suffered a heart attack and died while shoveling snow for his employer. *Cronk*, 2024 IL App (1st) 221878WC, ¶ 8. The claimant testified that he was born to the decedent and Barbara Cronk, who later divorced. *Id.* ¶ 7. The coroner, Dr. Carroll, filed an initial report, which indicated that the decedent, a construction manager, complained of difficulty breathing while shoveling snow at a home build site. *Id.* ¶ 8. Paramedics responded to the site and provided treatment, but despite their efforts, the decedent went into cardiac arrest and passed away. *Id.*

According to the autopsy, the decedent's cause of death was hypertensive cardiovascular disease with coronary atherosclerosis as a factor significantly contributing to his death. *Id.* ¶ 9. The employer enlisted Dr. Carroll, a cardiologist, to provide an opinion and report on the cause of the decedent's death. *Id.* ¶ 10. Dr. Carroll opined that the decedent's coronary artery disease was most likely due to genetic factors, low "good" cholesterol, and daily cigarette smoking with the exertion from shoveling "less suspect." *Cronk*, 2024 IL App (1st) 221878WC, ¶ 10. Furthermore, he stated that the shoveling itself did not seem overly exertive, given the small amount of shoveling that was done. *Id.* After reviewing the autopsy report and additional records, Dr. Carroll provided an addendum report acknowledging the decedent had multi-vessel coronary artery disease with 50% narrowing in the left anterior descending coronary artery, the circumflex coronary artery, and the right coronary artery. *Id.* ¶ 11. Dr. Carroll opined in the addendum that the immediate cause of death was likely a fatal cardiac arrhythmia because of the decedent's abnormal heart muscle and unrelated to physical activity. *Id.*

The claimant obtained a records review from Dr. Tamlyn, an interventional cardiologist, who opined that the decedent's cardiac arrest most likely resulted from cardiac ischemia and unstable angina or transient coronary occlusion. *Id.* ¶ 12. Dr. Tamlyn found that the decedent had cardiac hypertrophy and that the fatal event was "obviously brought on or aggravated by physical exertion." *Id.* After the arbitration hearing, the arbitrator found the opinions of Dr. Carroll most persuasive and found no causal connection between the decedent's condition of ill-being and any injury arising out of his employment. *Cronk*, 2024 IL App (1st) 221878WC, ¶ 13. Additionally, the arbitrator noted survivor benefits would not be appropriate had causation been found because, at the time of the decedent's death, the claimant was over the age of 18, was not enrolled full-time in school, and did not testify to having any dependency upon the decedent. *Id.*

The claimant filed a petition for review of the arbitrator’s decision before the Commission. *Id.* ¶ 14. The Commission issued a decision affirming and adopting the arbitrator’s decision. *Id.* As a result, the claimant sought judicial review of the Commission’s decision before the Circuit Court of Cook County, which the court confirmed. *Id.* ¶ 15. The claimant then appealed to the Illinois Appellate Court First District. *Id.*

Preliminary Analysis

On appeal, the appellate court had to consider (1) whether decedent suffered an accidental injury arising out of and in the course of his employment; (2) whether decedent’s condition of ill-being was causally related to his alleged work accident; and (3) whether claimant was considered a survivor under the Act. *Cronk*, 2024 IL App (1st) 221878WC, ¶ 17.

The court found that the decedent suffered an injury arising out of his employment, as shoveling snow would be a reasonably expected duty of a construction manager on a home build site in anticipation of prospective buyers. *Id.* ¶ 23.

With regard to causal connection, given the conflicting expert reports, the court looked to *Caterpillar Tractor Co. v. Industrial Comm’n*, 92 Ill. 2d 30, 37 (1982), in citing “[T]o the extent that the medical testimony might be construed as conflicting, it is well established that resolution of such conflicts falls within the province of the Commission, and its findings will not be reversed unless contrary to the manifest weight of evidence.” *Id.* ¶ 27. The court found that the manifest weight of the evidence proved that decedent’s employment-related activity was a causative factor in his cardiac arrest. *Id.* ¶ 28. In support of its finding, the court cited Dr. Tamlyn’s opinions that there was an obvious aggravation of decedent’s pre-existing heart condition brought on by shoveling the snow at work. *Id.* ¶ 29. Additionally, the court noted that Dr. Carroll acknowledged decedent’s breathing difficulties shortly after he started shoveling snow. *Id.* While Dr. Carroll did not explicitly state there was a causal connection, he did state that based on temporal relationship between shoveling the snow and the subsequent chest pain “it would make sense that the two were related.” *Cronk*, 2024 IL App (1st) 221878WC, ¶ 29. Even though Dr. Carroll opined there was not a causal relationship in his subsequent report, the court found that shoveling the snow was a contributing factor in decedent’s condition of ill-being. *Id.* ¶ 30. This revealed a causal relationship even if such physical activity is not the sole or primary causative factor. *Id.*; see *Sisbro, Inc. v. Industrial Comm’n*, 207 Ill. 2d 193, 204-05 (2003) (“[E]ven though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor.”). As a result, the Commission’s decision denying accident and causal connection under the Act was against the manifest weight of the evidence. *Cronk*, 2024 IL App (1st) 221878WC, ¶ 30.

Survivor Benefits

Lastly, the court turned to the issue of survivor benefits. The court found survivor benefits in this matter was a question of law and statutory interpretation; therefore, their review would be *de novo*. *Id.* ¶ 33. *De novo* review occurs when a court decides an issue without deference to the previous court’s decision, usually when an appeal is based on a question of law. The court will construe a statute to “give effect to the legislature’s intent, which is best indicated by the plain and ordinary language of the statute.” *Ravenswood Disposal Services v. Illinois Workers’ Compensation Comm’n*, 2019 IL App (1st) 181449WC, ¶ 22.

Section 7(a) of the Act states:

If the employee leaves surviving a widow, widower, child or children, the applicable weekly compensation rate computed in accordance with subparagraph 2 of paragraph (b) of Section 8, shall be payable during the life of the widow or widower and if any surviving child or children shall not be physically or mentally incapacitated then until the death of the widow or widower or until the youngest child shall reach the age of 18, whichever shall come later; provided that if such child or children shall be enrolled as a full-time student in any accredited educational institution, the payments shall continue until such child has attained the age of 25.

820 ILCS 305/7(a). The Commission found that claimant was not entitled to survivor benefits under section 7(a) because claimant was over the age of 18 and not enrolled in school at the time of decedent's death. *Cronk*, 2024 IL App (1st) 221878WC, ¶ 35. The appellate court disagreed and relied on the case *Drives, Inc. v. Industrial Comm'n*, 124 Ill. App. 3d 1014 (1984).

In *Drives*, the appellate court determined that a surviving child was entitled to benefits because she was under the age of 25 and a full-time student and rejected the argument that benefits should have ceased when her school enrollment was disrupted. *Drives, Inc.*, 124 Ill. App. 3d at 1017. The court in *Drives* recounted that the Act was amended to “provide a broader eligibility test” stating a child qualifies for benefits if he/she is (1) under the age of 18; (2) under the age of 25 and a full-time student; or (3) physically or mentally handicapped. *Id.* at 1016-17. The *Drives* court then turned to section 7(c) that stated:

If no compensation is payable under paragraphs (a) or (b) of this Section and the employee leaves surviving any child or children who are not entitled to compensation under the foregoing paragraph (a) but who at the time of the accident were nevertheless in any manner dependent upon the earnings of the employee...then there shall be paid to such dependent or dependents for a period of 8 years weekly compensation payments...

Id. at 1017. Using the “broad eligibility test” in combination with the plain language of sections 7(a) and 7(c), the *Drives* court found that the legislature's intent was to provide broad eligibility to surviving children up to the age of 25. *Id.*

The appellate court in this case reasoned that, like *Drives*, benefits should not be denied to claimant because of an interruption in education if he was under 25 years of age. *Cronk*, 2024 IL App (1st) 221878WC, ¶ 40. In *Drives*, the interruption in claimant's education occurred between undergraduate and graduate school. *Id.* In *Cronk*, claimant's father died on December 6, 2006, when the claimant was 18 years old and approximately 6 months after he graduated high school. *Id.* The claimant took a “gap year” after graduating high school and enrolled in college in the fall of 2007. *Id.* The court stated the facts supported their stance that claimant was entitled to benefits under section 7(a) of the Act using the broad eligibility test. *Id.* As a result, the appellate court reversed the circuit court's judgment and remanded the claim for further proceedings.

Key Takeaways

It should be troubling for employers that the appellate court took such a liberal approach in reaching its findings in this claim. First, in determining what is required to prove employment is a causative factor in the injury; Second, in determining the legislative intent of section 7 of the Act.

The court's decision in *Cronk* could make it even harder for Illinois employers to defend claims involving claimants with pre-existing conditions as it continues to broaden the kinds of accidents and injuries that arise out of and are causally related to a claimant's employment. It appears it was enough for the appellate court that the decedent was shoveling snow



at the time of the onset of his symptoms as the coroner's report didn't even describe the cause of death as an acute event, instead only describing it as hypertensive cardiovascular disease. Might the court have found differently in this case if a more convincing and detailed expert opinion had been entered into evidence with more documented credible reasoning as to why lower courts denied the claim? Possibly. That is certainly something employers and their counsel should take to heart when preparing their defenses of claims.

The legislative intent of section 7 of the Act was interpreted by the appellate court extremely broadly, especially given the court's reasoning for coming to its decision. The court stated that it could not speculate on the intent of the legislature in framing the law and then went on to reason that denial of survivor benefits for a child under 25 who had a break in education at the time of a parent's death would be contrary to the legislative intent of section 7. However, it also quoted controlling case law that when statutory language is unambiguous and clear, it will be given effect without reliance on other devices of construction. The court's ruling that survivor benefits should be broadly applied to dependent children up to age 25 who are not full-time students at the time of decedent's death but are full-time students at some point in the analysis, aligns with the findings in *Drives*, but it is questionable whether the legislative intent of section 7 was to expand benefits to such a survivor who does not meet the requirements as laid out in the four corners of the statute. Arguably, if the intent of the legislature was to have an exception for a break in education for a claimant between 18-25 years of age, it would have been drafted into the statute.

About the Author

Amber D. Cameron is a partner at *Heyl, Royster, Voelker & Allen, P.C.*, working out of the firm's Edwardsville and St. Louis offices, where she focuses her practice on workers' compensation and toxic tort litigation. A seasoned trial attorney, Ms. Cameron represents employers of all sizes throughout southern Illinois and Missouri. Regularly providing educational seminars to insurance companies, third-party administrators, and self-insured employers, she has a keen eye for detail and a tactical approach, working diligently with her clients to develop creative resolution strategies for her claims. Before joining Heyl Royster, Ms. Cameron gained advanced knowledge of Illinois workers' compensation law while working as a staff attorney at the Illinois Workers' Compensation Commission. She earned her law degree and a certificate in dispute resolution from the University of Missouri-Columbia School of Law, where she excelled in legal writing.

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