

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. ADJ 6606793

LUIS CISNEROS (Deceased),

Applicant,

SAN LUIS OBISPO
DISTRICT OFFICE

-vs-

MINUTES OF HEARING

HERMANOFF INC.; U.S. FIRE INSURANCE
Adjusted by CRUM & FORSTER
INSURANCE COMPANY,
Defendant(s).

AND
OPINION, FINDING AND ORDER

PLACE AND TIME: San Luis Obispo, California
November 3, 2014; 9:44 - 9:52 A.M.

JUDGE: The Honorable MICHAEL LeCOVER
REPORTER: Sheryl L. Goddin, CSR #5188

APPEARANCES: FLETCHER F. BOUYER
Attorney for Applicant

BRADFORD & BARTHEL
BY: SCOTT STAR
Attorney for Defendant

BILLING DYNAMICS
BY: GAIL S. TAYLOR
Attorney for Lien Claimant

WITNESSES: NONE

Marisol Rodriguez Fernandez, unmarried partner, and
Julisa Rodriguez Fernandez, (born February 20, 1998) are
claimed dependents.

AT THE TIME OF THE MSC, THE PARTIES STIPULATED THAT:

1. Decedent, Luis Cisneros, born October 31, 1981,
while employed by defendant/employer on September 1, 2008,
sustained injury arising out of and in the course of
employment to his back.

2. At the time of the injury the employer was insured

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by U.S. Fire Insurance, adjusted by Crum and Forster Insurance.

3. Defendant claims applicant has been adequately compensated for all periods of indemnity.

4. Decedent passed away on September 9, 2013.

The sole issue today is whether or not the dependency claim is barred by the Statute of Limitations.

On the motion of counsel, the undersigned will appoint Marisol Rodriguez Fernandez as guardian ad litem and trustee for minor Julisa Rodriguez.

DISPOSITION:

The matter will stand submitted.

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OPINION OF JUDGE ON DECISION

The facts as reflected in the MSC statement and in the Minutes of Hearing are adopted and incorporated as Findings of Fact.

More specifically, it was stipulated that decedent, Lewis Cisneros, sustained injury arising out of and in the course of his employment on September 8, 2008, and he passed away on September 9, 2013.

The undersigned wishes to emphasize that the only issue the undersigned is deciding is whether or not the dependency claim is barred by the Statute of Limitations. The issue of inter vivos benefits, if any, or the lien of Dr. Moelleken, are not being decided.

The undersigned considers the case of Massey v. WCAB (1993) 5 Cal.4th 674, 58 CCC 367, to be dispositive of this issue. Simply put, the case is barred by the Statute of Limitations.

In this case, the Supreme Court held that it is a condition precedent before dependency benefits may be awarded that the decedent died within 240 weeks of the injury. The decedent in this case passed away beyond that time period and; therefore, the case is barred by the Statute of Limitations.


FINDING OF FACT

1. The case is barred by the Statute of Limitations.

ORDER

IT IS HEREBY ORDERED that applicants take nothing by way of this dependency claim.

* * *


MICHAEL LeCOVER, PRESIDING
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

**PROOF OF SERVICE OF 11/3/14 MINUTES OF HEAIRNG,
OPINION, FINDING AND ORDER**

Case Number: ADJ6606793

BILLING DYNAMICS MOORPARK	Law Firm, PO BOX 115 MOORPARK CA 93020, BILLING@KIMSBILLING.COM
BRADFORD BARTHEL VENTURA	Law Firm, 5720 RALSTON ST STE 200 VENTURA CA 93003, E- DOCS@BRADFORDBARTHEL.COM
CRUM FORSTER PLANO	Insurance Company, 6404 INTERNATIONAL PKWY STE 1000 PLANO TX 75093
DEATH WITHOUT DEPENDENTS UNIT	Dependent, PO BOX 422400 SAN FRANCISCO CA 94142
DEPARTMENT OF INDUSTRIAL RELATIONS	Other Employer, DEATH WITHOUT DEPENDENTS 107 S BROADWAY RM 6111 LOS ANGELES CA 90012
FLETCHER BOUYER SHERMAN OAKS	Law Firm, 15300 VENTURA BLVD STE 221 SHERMAN OAKS CA 91403- 5851
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(The above parties were served by U.S. Mail on 11/5/14 by Sheryl Goddin.)

