

"Anti-marriage" Worker's Comp Rule in Wyoming?

Why would State encourage couples to divorce?

Only in government-speak does "permanent total disability" mean five years or seven years or another arbitrary duration.

And while government doesn't have a market on the appointment of unqualified friends to important jobs, it is becoming quite a problem here in Wyoming.

Certainly, to protect public funds, agencies like the Worker's Compensation Division of the Department of Employment, should have the right to monitor workers injured while working in Wyoming to determine if their status has changed.

Sometimes, injured workers do get better and can return to work.

But that's not what this story is about.

This story is about a man, injured working on oil rigs in the early 1980's, that everyone agrees is permanently and totally disabled.

What is in dispute is whether his wife's income can be, should be, considered when determining what other income he has and whether it would exceed an allowable amount and let Wyoming Worker's Comp off the hook for payment related to his injuries.

For two decades, this injured man received the benefits of which he and his attorney believe he was entitled.

A man with minimal formal education, he has become an eloquent spokesman for those similarly situated - those with permanent total disabilities which are work related. Now his fight is for himself.

W.S. 27-14-403 (g)(i)(C), previous to 1998, had read: "The division in determining entitlement under this paragraph shall consider income of the employee from all sources including active or passive income, household income and any monthly amount from any other governmental agency."

This section of the statute was changed in 1998 because in 1997, the Department had announced it was going to begin to consider household income of members of the household other than the injured

worker to determine eligibility and amount of benefit.

It is hard to imagine where the Department read into 27-14-403 (g)(i)(C) that it said a spouse, child, or sibling's income would be counted as the injured worker's income for these purposes. It specifically reads "income of the employee." Income of the spouse or another living under the same roof is not income of the employee.

The definition of income of the employee, it seems, would mean rental income from property he held, pension or retirement income, social security or SSI, insurance proceeds to him, interest or investment income to him, even jointly held property income (his share), but not another's income just because they lived together. If a spouse's income would count, why not a parent's, if the injured worker had to move in with them because he couldn't afford a mortgage on his own - even with a working spouse?

Public hearings were held on the proposed change and the Department retreated. The Herald was told that even industry representatives, they who pay the money into worker's comp so benefits can be awarded, testified against the change in determination of an injured worker's household income.

The following year, Sen. Charlie Scott of Casper, during a budget session, introduced legislation that specifically exempted a spouse's income from consideration toward eligibility or determination of benefit amount.

To prevent confusion, the new legislation stated: "The division shall not consider any other income received by the injured worker or members of the injured worker's household;"

"SHALL NOT CONSIDER ANY OTHER INCOME RECEIVED BY ... MEMBERS OF THE INJURED WORKER'S HOUSEHOLD;"

Seems clear. And probably is - except to bureaucrats who are trying to make a name for themselves to ingratiate themselves even deeper with the governor who appointed them to a job for which they

were unqualified.

Perhaps they believe they are protecting the resources of the state - that the fund from which benefits are paid is becoming precariously diminished. While the Herald could not confirm the current balance in this fund, it is estimated that it may approach \$500,000,000! A half billion dollars.

The oilfield worker injured in 1981 and again in 1984 was annually provided benefits until 2005. In spite of the legislation specifically excluding spouse's income from any equation determining eligibility or amount of benefits, the Department continued to provide a form requesting that information when an injured worker made the annual request for extended benefits (which apply after the permanent total disability benefits are exhausted).

Each year until 2005, Cheyenne attorney George Santini submitted the forms and declined to provide data on the spouse's income. Each year, the Department granted the extended benefits.

In 2005, the injured worker submitted the forms himself and provided a copy of the couple's joint income tax return.

Extended permanent total disability benefits were denied.

The Department has taken the position that the law at the time of initial determination of benefits applies and they believe the reading of the statutes pre-1998 allows them to include spousal income in the determination.

A Class Action lawsuit has been filed in U.S. District Court, District of Wyoming, and Judge Alan Johnson has been assigned the case. Among the defendants in the action are Cynthia Pomeroy, a Governor Dave Freudenthal appointee, Gary Child, and Barbara Brazzale.

It is believed that there are other injured Wyoming workers in similar situations. In fact, some of them may have had their benefits terminated earlier - if the Department were able to gain data about their spouse's income.

A solution to the dispute may be for couples to divorce, then live together out of wedlock. Some may have done that. This couple will not consider that option. In one of the most conservative states in the nation, to force people into divorce to beat the system is unconscionable.


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