Cherokee Nation Code Annotated
Title 85: Workers' Compensation
Chapter 1: General Provisions
§ 32. Death benefits
Cite as: 85 CNCA § 32

A. If an injury or occupational disease sustained by an employee proximately results in his or her death following his or her injury or diagnosis of occupational disease, compensation shall be paid as follows:

1. If there are eligible dependents at the time of the employee's death, payment shall consist of weekly death benefits computed as seventy-two percent (72%) of the deceased's average weekly wage, but the gross average weekly wage shall in no case exceed Seven Hundred Seventeen Dollars ($717.00). The maximum weekly income benefits payable to all beneficiaries varies depending upon the deceased's average weekly wage. If the deceased's average weekly wage is less than Seven Hundred Seventeen Dollars ($717.00), the aggregate weekly income benefits payable to all beneficiaries shall not exceed one-hundred percent (100%) of the deceased's average weekly wage. If the deceased's average weekly wage is equal to or greater than Seven Hundred Seventeen Dollars ($717.00), the aggregate weekly income benefits payable to all beneficiaries shall not exceed Seven Hundred Seventeen Dollars ($717.00). Such benefits may be paid through a structured settlement or lump sum as agreed by the employer and beneficiaries.

2. Payments of death benefits to an employee's spouse shall continue until the death of the spouse.

3. If there are no eligible dependents, compensation shall be limited to direct payment of funeral expenses, not to exceed Eight Thousand Dollars ($8,000.00), and compensation benefits due up to the time of his or her death, payable to the estate of the deceased.

4. In no case shall death benefits exceed Two Hundred Thousand Dollars ($200,000.00).

B. If an employee dies as a result of a compensable injury or occupational disease, any unapproved portion of an award or order shall abate.

C. The line of dependency for payment of death benefits shall be in the order set out below; provided each qualifies as a dependent under the terms and conditions as defined in subsection G.

1. First to the surviving widow or widower, if there are no children. If dependent children exist at time of employee's death, payment is to widow or widower, subject to the provisions of this section.

2. If no surviving widow or widower, to a dependent child, fifty percent (50%) of the deceased's average weekly wage not to exceed Seven Hundred Seventeen Dollars ($717.00), or if two (2) dependent children, seventy percent (70%) of the average weekly wage not to exceed Seven Hundred Seventeen Dollars ($717.00), or if three (3) children, ninety percent (90%) of the average weekly wage not to exceed Seven Hundred Seventeen Dollars ($717.00) or if four (4) or more children, a weekly benefit of Seven Hundred Seventeen Dollars ($717.00) to be equally distributed among such dependent children;

3. To a parent or parents, if dependent upon the deceased employee and if there are no surviving widow or widower or eligible children, twenty-five percent (25%) of the deceased's average weekly wage not to exceed Seven Hundred Seventeen Dollars ($717.00) if only one (1) parent; or fifty percent (50%) of the deceased's average weekly wage not to exceed Seven Hundred Seventeen Dollars ($717.00) to be divided equally between both parents if both are dependent upon the deceased covered worker;

4. If there is no eligible dependent widow or widower, children or parents, the death benefit shall be equally distributed among all other eligible dependents at twenty-five percent (25%) of the deceased workers' average weekly wage, subject to the maximum of Seven Hundred Seventeen Dollars ($717.00).

D. If a deceased minor employee has no other dependents, his or her parent(s), guardian(s), or adoptive parent(s) are entitled to death benefits as defined in subsection G.

E. In no case shall death benefits exceed Two Hundred Thousand Dollars ($200,000.00).

F. Compensation to a dependent widow or widower shall be for the use and benefit of the widow or widower and the dependent children; and the employer may, at the time of award, apportion the compensation between them in such a way as it deems best for the interest of all dependents.

G. In respect to death benefits under this section, the following definitions shall apply:

1. **"Child"** means a natural or adopted son or daughter of the employee under eighteen (18) years of age; or a natural or adopted son or daughter of an employee eighteen (18) years of age or over and physically or mentally incapable of self-support; or any natural or adopted son or daughter of an employee eighteen (18) years of age or over who is actually dependent; or any natural or adopted son or daughter of an employee between eighteen (18) and twenty-three (23) years of age who is enrolled as a full-time student in any

accredited educational institution. The term "child" includes a posthumous child, a child legally adopted or one for whom adoption proceedings are pending at the time of death, an actually dependent stepchild or an actually dependent acknowledged child born out of wedlock.

2. **"Dependent"** means:

a. a surviving spouse as defined in this section;

b. a child as defined in this section; or

c. any other person dependent in fact upon the employee and refers only to a person who receives one-half (1/2) or more of his support from the employee.

3. **"Parent"** means a mother or father, a stepparent, a parent by adoption and a parent-in-law, if actually dependent in each case except as provided in paragraph (1) of this subsection.

4. **"Surviving spouse"** means only the employee's spouse living with or actually dependent upon the employee at the time of his injury or death, or living apart for justifiable cause or by reason of desertion by the employee;

H. All questions of relationship and dependency shall be determined as of the time of injury for purposes of income benefits for injury, and as of the time of death for purposes of income benefits for death.

I. A person ceases to be dependent when the person's income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time the original determination of actual dependency was made, it would not have supported a finding of dependency. If the present annual income of a dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be dependent shall be presumed to be no longer dependent three (3) years after the time as of which the person was found to be dependent. This presumption may be overcome by proof of continued dependency as defined in this section.

J. Change in dependents. Upon the cessation of income benefits under this section to or for the benefit of any person, the income benefits payable to the remaining persons who continue to be entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

Historical Data

LA 08–04, eff. April 21, 2004. Amended LA 31–05, eff. October 16, 2005; LA 21–06, eff. October 19, 2006; LA 20–10, eff. August 15, 2010.