

SHAHIRA OMAR and LILY)	
CARRASCO BONILLA)	
(putative widows of MOHAMMED)	
OMAR, deceased))	
)	
Claimants-Respondents)	
)	
v.)	
)	
AL MASAR TRANSPORTATION)	DATE ISSUED: 06/14/2012
COMPANY and INTERNATIONAL)	
OIL TRADING COMPANY)	
)	
and)	
)	
INSURANCE COMPANY OF THE)	
STATE OF PENNSYLVANIA)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Decision and Order of Steven B. Berlin, Administrative Law Judge, United States Department of Labor.

Roger A. Levy and Jennifer J. Nobley (Laughlin, Falbo, Levy & Moresi, L.L.P.), San Francisco, California, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2010-LDA-00716) of Administrative Law Judge Steven B. Berlin rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33

U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Decedent, a foreign national, was hired as a convoy commander and began working for employer in Jordan on May 1, 2006. On June 9, 2006, while he was taking a break from processing truck documentation on the Iraq-Jordan border, decedent was killed when a truck ran over him. Employer voluntarily paid death benefits under Section 9(b) of the Act, 33 U.S.C. §909(b), to decedent’s “widow,” Shahira, who holds dual citizenship in Jordan and Palestine and is the mother of decedent’s four adult children. During the investigation of the incident, employer discovered a second “widow,” Lily, who is a citizen of Honduras and is the mother of decedent’s two minor children. Employer divided the death benefits among the two women and the two minor children.

The administrative law judge found that Shahira is not entitled to benefits under Section 9 of the Act. However, he determined that Lily is entitled to benefits based on her status as, at least, a putative wife under the laws of California, where she and decedent were “married,” and that her minor children are entitled to benefits as decedent was their father. Therefore, the administrative law judge awarded Lily and her children benefits pursuant to Section 9(b), and he determined that employer is entitled to a credit for any voluntary benefits paid to them. The administrative law judge denied employer a credit for any benefits voluntarily paid to Shahira. Further, he found that commutation of benefits pursuant to Section 9(g), 33 U.S.C. §909(g), is unavailable at this time as Lily’s children are citizens of the United States. Decision and Order at 6-10. Employer appeals the administrative law judge’s decision.¹ Lily, without representation, filed a letter urging the Board to reject the appeal and to keep the “sentence firmly maintained.” The Board interpreted this letter as a “motion to dismiss” the appeal, which it denied. *Omar v. Al Masar Transp. Co. & Int’l Oil Trading Co.*, BRB 11-0809 (Nov. 23, 2011).

Employer contends the administrative law judge erred in not finding both women to be widows entitled to death benefits. Employer asserts that the proper conclusion is to divide the single death benefit among the two widows and the two minor children and that accepting two widows for the purpose of administering death benefits is not contrary to public policy in this case. Employer also asserts that the administrative law judge

¹Shahira has not appealed the decision and has not responded to employer’s appeal.

erred in raising the issue of commutation of benefits *sua sponte* and in finding that commutation is not available to satisfy employer's liability.²

Decedent was born in either 1954 or 1956 in Palestine. EX 6; LX 7. He married Shahira who was born in Jordan in 1952.³ EX 6. They had four children – all adults at the time of decedent's death in June 2006. EX 10. At some time, decedent ceased living with Shahira and moved to the United States. There, he married Linda DeJude; they were legally divorced on November 13, 1986.⁴ Decision and Order at 4; EX 8, 10. On July 15, 1996, decedent and Lily underwent a marriage ceremony in Los Angeles, California. The marriage license reflects decedent's statement that he was once divorced, but it does not identify from whom.⁵ Decision and Order at 4; EX 6; LX 7. Sometime after the wedding, decedent was incarcerated for reasons that are not in the record. Meanwhile, a daughter was born to decedent and Lily in California on April 20, 1997. EX 6, 10-11; LX 8-9. Lily then returned to Honduras and opened a clothing store. Upon decedent's release from prison at the end of 1997, U.S. officials deported him to Jordan, and from there he moved to Honduras. LX 26.

The family remained in Honduras, except for a period when they returned to California for the birth of their second daughter on February 18, 1999. *Id.* Decedent obtained legal resident status in Honduras, and he and Lily operated a restaurant there between 2002 and 2005. LX 13-14, 17. In February 2005, decedent and his older daughter moved to Jordan. Lily and the younger daughter joined them a few months later. On April 4, 2005, decedent requested a "first revocable divorce" from Shahira and a Jordanian court granted the request. EX 13. However, before the divorce became final after the three-month "iddat" period, a Palestinian court issued a decree on July 2, 2005,

²Although employer concedes its liability for death benefits, we conclude it has standing to appeal the administrative law judge's decision, as his findings regarding credit and commutation are adverse to employer. 20 C.F.R. §802.201.

³The administrative law judge found there is no evidence of the marriage, but no party disputes that it occurred. Decision and Order at 3-4.

⁴Ms. DeJude and decedent had two children; they were adults at the time of decedent's death. EX 10. They are not a party to this claim. Decision and Order at 4.

⁵The administrative law judge concluded that Lily had never heard of Ms. DeJude and that she presumed the divorce was from Shahira. Decision and Order at 8.

stating that decedent had reaffirmed his marriage to Shahira.⁶ EX 13-15; LX 11. The administrative law judge found there is no evidence to show that decedent left Lily or began to support Shahira at that time. Decision and Order at 5.

In addressing the marriages, the administrative law judge stated he was uncertain whether Shahira and decedent were married at the time of decedent's death; however, he inferred that decedent would not have begun divorce proceedings had decedent not believed he may have been married to Shahira in 2005. In any event, the administrative law judge found that, as they were living apart, a "conjugal nexus" was essential to establishing Shahira's entitlement to death benefits and that nothing in the record established a conjugal nexus between decedent and Shahira at the time of decedent's death. The administrative law judge also found that Shahira could not establish any of the Act's other requirements for entitlement to benefits as decedent's widow; therefore, the administrative law judge denied Shahira benefits. 33 U.S.C. §909; Decision and Order at 6-7.

With respect to Lily, the administrative law judge found that the marriage between Lily and decedent may or may not have been lawful, depending on the legal status of Shahira's marriage. Even if Lily's marriage was void legally, the administrative law judge found that she met the requirements for a putative spouse under California law and that she was living with decedent at the time of his death. Therefore, the administrative law judge found that Lily is entitled to benefits as decedent's widow.⁷ Decision and Order at 8.

⁶It appears Lily was unaware of these actions until after decedent died because she argued that decedent had divorced Shahira many years ago. According to the investigative reports in the record, however, a Jordanian court confirmed the 2005 reaffirmation that occurred in Palestine. EX 14-15; LX 11. The administrative law judge accepted the reaffirmation as fact. Decision and Order at 5.

⁷This award is unchallenged. Where there is a legal impediment to a marriage, and common-law marriage is not permitted, as in California, the putative spouse doctrine provides that the party claiming entitlement must have an objective good faith belief that a valid marriage exists and this belief must continue throughout the marriage. *Burks v. Apfel*, 223 F.3d 1220 (10th Cir. 2000); *Tatum v. Tatum*, 241 F.2d 401 (9th Cir. 1957); *In re Domestic Partnership of Ellis*, 76 Cal. Rptr. 3d 401 (Cal. App. 4th D. 2008); *In re Marriage Cases*, 43 Cal.4th 757, 793 n.13 (Cal. 2008). The administrative law judge rationally found that Lily had a good faith belief that her marriage was valid and, thus, awarded her benefits. Decision and Order at 8.

Shahira's "widow" status

Section 9(b) of the Act provides for death benefits as follows:

If there be a widow or widower and no child of the deceased, to such widow or widower 50 per centum of the average wages of the deceased, during widowhood, or dependent widowerhood, with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 16^{2/3} per centum of such wages for each child;

The term "widow" is defined in Section 2(16) of the Act, 33 U.S.C. §902(16). It states:

The terms "widow or widower" includes [sic] only the decedent's wife or husband living with or dependent for support upon him or her at the time of his or her death; or living apart for justifiable cause or by reason of his or her desertion at such time.

Whether a claimant is a "widow" is determined by applying the law of the forum of the "marriage" to determine the marital status of the couple. *Jordan v. Virginia Int'l Terminals*, 32 BRBS 32 (1998) (not a "wife" under Virginia law; remand to consider South Carolina law); *see Gibson v. Hughes*, 192 F.Supp. 564 (S.D.N.Y. 1961) (law of France applied; the claimant was a "wife" under Longshore Act); *see also Seaboard Air Line Ry. v. Kenney*, 240 U.S. 489 (1916) (rules of next-of-kin are determined by local laws); *Powell v. Rogers*, 496 F.2d 1248 (9th Cir.), *cert. denied*, 419 U.S. 1032 (1974) (no marriage ceremony; spouse not legal or putative under California or Nevada law and not entitled to benefits under Longshore Act); *Albina Engine & Machine Works v. O'Leary*, 328 F.2d 877 (9th Cir.), *cert. denied*, 379 U.S. 817 (1964) (common-law marriage attained in either Oregon or Idaho; spouse entitled to benefits under Longshore Act).

A claimant must establish her status as a "wife" and at least one of the Section 2(16) criteria in order to be entitled to death benefits as a "widow." *See Ryan-Walsh Stevedoring Co. v. Trainer*, 601 F.2d 1306, 10 BRBS 852 (5th Cir. 1979); *Denton v. Northrop Corp.*, 21 BRBS 37 (1988). If the married couple is not living together and the spouse is not dependent on the employee for support, the Supreme Court has stated that the essential requirement for demonstrating "widow" or "widower" status under the Act is the establishment of a "conjugal nexus" between the decedent and the claimant. *Thompson v. Lawson*, 347 U.S. 334 (1954). A "conjugal nexus" depends on the "behavior" of the claimant and not necessarily that of the decedent. *Id.*; *Kennedy v. Container Stevedoring Co.*, 23 BRBS 33 (1989). The Board has held that before reaching the issue of whether a conjugal nexus existed, the claimant must establish that

she and the decedent were living apart for a justifiable cause or by reason of desertion. *Meister v. Ranch Restaurant*, 8 BRBS 185 (1978), *aff'd*, 600 F.2d 280 (D.C. Cir. 1979) (table). Where justifiable cause exists for the initial separation from the employee, subsequent conduct of the claimant may sever the conjugal nexus, and, thus, the claimant will not be considered the widow/widower under the Act. *Henderson v. Avondale Marine Ways, Inc.*, 204 F.2d 178 (5th Cir.), *cert. denied*, 346 U.S. 875 (1953).

In this case, decedent married Shahira in Jordan according to Islamic law, and he later married Lily in a non-denominational ceremony in accordance with the laws of California. Decedent then reaffirmed his marriage to Shahira in Palestine by revoking the divorce within the three-month “iddat” or waiting period, pursuant to the laws of Islam.⁸ See EX 8. Presuming Shahira and decedent were once legally married, and as decedent reaffirmed the marriage in July 2005 prior to a final divorce, then, under the law of the foreign forums, Shahira was legally married to decedent at the time of his death. See Decision and Order at 6 n.7. This is employer’s only assertion on appeal – that because decedent and Shahira were legally married, she is decedent’s widow entitled to death benefits. However, contrary to employer’s assertion, a “legal” marriage alone is not enough to establish entitlement to death benefits under the Act.

In *Thompson*, 347 U.S. at 336-337 (emphasis added), the Supreme Court explained:

We do not reach this conclusion [that the claimant was not a “widow”] by assessing the marital conduct of the parties. That is an inquiry which may be relevant to legal issues arising under State domestic relations law. Our concern is with the proper interpretation of the [Longshore] Act. *Congress might have provided in that Act that a woman is entitled to compensation*

⁸Under Sharia, or Islamic, law, men are permitted to have up to four wives, provided they can care for them equally. See Jaafar-Mohammad, Imani, and Lehmann, Charlie. “Women’s Rights in Islam Regarding Marriage and Divorce,” *Journal of Law and Practice*. William Mitchell College of Law, April 11, 2011 (viewed 5/22/12), <http://lawandpractice.wordpress.com/2011/04/11/women%E2%80%99s-rights-in-islam-regarding-marriage-and-divorce/>. Divorce occurs when the husband utters the “talaq” – or repudiation, and, in Jordan, there also must be a written document. There is a three-month period following the talaq during which the husband may revoke the divorce. If he does so, it does not become final, and the parties remain married. The U.S. does not recognize either multiple marriages or these types of divorces without some formal action filed in state court. *Id.*; see also SX 1 (letter from Shahira’s representative explaining Sharia marriage and divorce law as it relates to the laws of the United States).

so long as she is still deemed to be the lawful wife of the decedent under State law, [but] Congress did not do so. It defined the requirements which every claimant for compensation must meet. . . . The essential requirement is a conjugal nexus between the claimant and the decedent subsisting at the time of the latter's death, which, for present purposes, means that she must continue to live as the deserted wife of the latter.

Under the Act, Congress has mandated that the legal wife must be “living with or dependent for support upon” the decedent “or living apart for justifiable cause or by reason of [the decedent's] desertion” at the time of the employee's death. 33 U.S.C. §902(16). Only if at least one of these criteria is met is the widow entitled to compensation. *Griffin v. Bath Iron Works Corp.*, 25 BRBS 26 (1991).

Regardless of whether Shahira and decedent were lawfully married at the time decedent married Lily or at the time decedent died, the administrative law judge correctly found that, even if a legal marriage existed, Shahira is not entitled to death benefits under the Act because there is insufficient evidence that any of the criteria in Section 2(16) for being a “widow” are satisfied.⁹ As the administrative law judge correctly found, there is no evidence that decedent was living with Shahira; he found that decedent was either living with Lily or was incarcerated. Decision and Order at 7; *see* LX 5-9, 12-19. There also is no evidence that decedent was supporting Shahira financially, despite the Islamic law stating that multiple wives must be equally supported.

As Shahira and decedent were living apart, in order for her to obtain benefits under the Act there must have been a desertion or some other justifiable reason for living apart. The administrative law judge summarily found there was none. Decision and Order at 7. As the administrative law judge correctly stated, there is no evidence of record establishing any basis for their living apart.¹⁰ Although decedent moved to the

⁹Shahira submitted only one piece of “evidence” to the administrative law judge – a letter written by a representative. The administrative law judge accepted this letter as a party-affiliated *amicus curiae* brief. Decision and Order at 2 n.2. The letter explained that Shahira is legally decedent's wife under the laws of Islam, Jordan and Palestine and that multiple marriages are accepted. The letter stated that Shahira would accept sharing the benefits with Lily. SX 1.

¹⁰“Justifiable cause” for living apart is a factual question of whether one spouse's departure from the home is defensible under the circumstances. *Pickrel v. District of Columbia Dep't of Employment Serv.*, 760 A.2d 199 (D.C. 2000). For example, if the employee is abusive, an alcoholic, not providing financial support, or has a mental instability, etc., the spouse may have justification for living apart. *See, e.g., New Valley*

United States and married other women, the record is devoid of any evidence regarding whether Shahira continued to live as “the deserted spouse” of, and to hold herself out as, decedent’s “wife.” See *Thompson*, 347 U.S. 334; *New Valley Corp. v. Gilliam*, 192 F.3d 150, 33 BRBS 179(CRT) (D.C. Cir. 1999); *Pickrel v. District of Columbia Dep’t of Employment Serv.*, 760 A.2d 199 (D.C. 2000); *Kennedy*, 23 BRBS 33; *Hicks v. Southern Illinois University*, 19 BRBS 222 (1987). This is required for Shahira to have maintained the conjugal nexus with decedent. *Id.* As the proper focus is on Shahira and there is no evidence that she continued to live as the deserted spouse of decedent, the administrative law judge rationally found that no conjugal nexus existed between Shahira and decedent despite any desertion that occurred. Compare with *Kennedy*, 23 BRBS at 36-37. In any event, decedent’s 2005 reaffirmation of his marriage to Shahira, acknowledging her as his wife, arguably counters any prior “desertion.”¹¹ Thus, in the absence of any evidence satisfying any of the criteria of Section 2(16), despite her arguable status as decedent’s “legal” wife, the administrative law judge did not err in finding that Shahira did not establish her right to death benefits under the Act. Employer has not established that the administrative law judge’s findings were erroneous in this regard. *Thompson*, 347 U.S. at 336-337. Therefore, we affirm the administrative law judge’s denial of death benefits to Shahira.¹²

Corp. v. Gilliam, 192 F.3d 150, 33 BRBS 179(CRT) (D.C. Cir. 1999); *In re Bryan*, 76 P.3d 653 (Okla. 2003); *Johnson v. Huxford Pole & Timber Co.*, 983 So.2d 1133 (Ala. Civ. App. 2007); *Goodrich v. R. L. Dresser, Inc.*, 161 N.C. App. 394, 588 S.E.2d 511 (N.C. App. 2003); see also *Kennedy v. Container Stevedoring Co.*, 23 BRBS 33 (1989) (spouses could not live together amicably); *Denton v. Northrop Corp.*, 21 BRBS 37 (1988) (job requirements required couple to live apart).

¹¹However, as noted, there is no evidence Shahira lived with or was dependent upon decedent.

¹²As Shahira is not entitled to benefits, we need not address employer’s argument that accepting two wives for the purpose of paying death benefits does not violate public policy. We also affirm the administrative law judge’s denial of a credit for benefits it voluntarily paid to Shahira against its liability to Lily and her children. Because Shahira is not entitled to compensation, benefits voluntarily paid to her are not part of the one death benefit payable under the Act. 33 U.S.C. §§909, 914(j); see *Valdez v. Crosby & Overton*, 34 BRBS 185, *aff’d on recon.* 34 BRBS 69 (2000); *Hawkins v. Harbert Int’l, Inc.*, 33 BRBS 198 (1999); see also, e.g., *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 26 BRBS 49(CRT) (1992) (a person becomes a “person entitled to compensation” under Section 33(g) at the moment his right to recovery vests and not when an employer admits liability); *Mabile v. Swiftships, Inc.*, 38 BRBS 19 (2004)

Commutation of Benefits

Employer contends the administrative law judge erred in addressing commutation of benefits, as that issue was not raised before him, and in closing out that option for employer in the future. Section 9(g) of the Act, 33 U.S.C. §909(g) (emphasis added), provides:

Aliens: Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the injury, and except that the Secretary may, at his option or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation *as determined by the Secretary*.

See also 42 U.S.C. §1652(b); 33 U.S.C. §§939, 940; 20 C.F.R. §§702.142 (stating that the “Director, OWCP, may, at his option . . . commute all future installments. . .”), 702.301. This section permits an employer to apply to the district director requesting to commute the benefits due a non-resident alien such that the employer would satisfy its liability by making a lump-sum payment equal to one-half of the commuted amount of the future installments due as determined by the district director. 20 C.F.R. §702.142(a), (b); *see Logara v. Jackson Engineering Co.*, 35 BRBS 83 (2001). The Secretary/district directors have a “great deal of discretion” in commuting benefits. *Id.*; *see Calloway v. Hanson*, 295 F.Supp. 1182 (D.Haw. 1969). Commutations must be based on an order fixing the rights of the beneficiaries to receive compensation. 20 C.F.R. §702.142(d).

In this case, employer originally filed an application with the district director in September 2008 seeking commutation of Shahira’s benefits. EX 6. The district director responded on March 31, 2009, requesting additional information and stating that the “file is not ready for commutation without clarification of the status of the alleged second wife and the two alleged biological children of the deceased.” The district director advised employer to provide the necessary information and resubmit the application. EX 7. Employer filed a letter with additional information, closing with the request to reconsider its application to commute Shahira’s benefits. EX 8. On August 18, 2009, the district

(where there is no liability under the Act, there is nothing against which a credit may apply).

director denied commutation. He stated it was impossible to tell whether Shahira was married to decedent at the time Lily married him, that the claims of all alleged spouses must be adjudicated before commutation is permitted, and that birth certificates for the children must be provided. EX 9. Subsequently, employer submitted two additional sets of documents in support of its application. EX 10-11. Thereafter, because the district director stated that an adjudication was required, the case was transferred to the Office of Administrative Law Judges where employer stated the issue as: “Defendants seek referral of this matter for purposes of a judicial determination of dependents under the Defense Base Act for purposes of obtaining a compensation order approving joint stipulations and commuting death benefits.” EX 12.

The administrative law judge sought briefs from the parties on whether commutation is indicated. Employer asserted that the administrative law judge did not have authority to address commutation, as that issue is within the purview of the district directors. Citing 29 C.F.R. §18.29, the administrative law judge determined he had the authority to address the issue.¹³ He found that, as Lily’s children are citizens of the United States, and Section 9(g) applies only to alien non-residents, commutation of benefits is not available as long as the children are entitled to benefits because there could be no “satisfaction of the entire benefit with a single payment of one-half the commuted amount” of future benefits.¹⁴ Decision and Order at 10; *see* 33 U.S.C. §902(14), (18).

We agree with employer that the authority for approving commutation applications rests only with the district director. 20 C.F.R. §702.142. The administrative law judge’s reliance on Section 18.29(a)(7) is misplaced, as that section refers to general powers related to conducting a formal hearing. Where the Rules of the Office of Administrative Law Judges, which are rules of general application, are inconsistent with a rule of special application, as here, they do not apply. 29 C.F.R. §18.1(a); *see generally Adams v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 78 (1989). Further, pursuant to the 1972 Amendments to the Act which added Section 19(d), 33 U.S.C. §919(d), the Board has held that statutory references to the authority of the deputy commissioners should be considered references to administrative law judges if judicial functions are involved. In contrast, statutory references to the Secretary of Labor, as in Section 9(g), have been held to refer to the deputy commissioners (district directors) to

¹³29 C.F.R. §18.29(a)(7) states that the administrative law judge may “[e]xercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Secretary of Labor as are necessary and appropriate therefor[.]”

¹⁴Contrary to employer’s statement, the administrative law judge did not find that Lily is a citizen of the United States. Decision and Order at 10.

whom the Secretary's discretionary authority has been delegated. 33 U.S.C. §919(d); *General Constr. Co. v. Castro*, 401 F.3d 963, 39 BRBS 13(CRT) (9th Cir. 2005), *cert. denied*, 126 S.Ct. 1023 (2006); *Cooper v. Todd Pacific Shipyards Corp.*, 22 BRBS 37, 40-41 (1989) (under Section 39(c)(2), the Secretary's direction of vocational rehabilitation is delegated to the district director and not to the administrative law judge). Thus, as employer asserts, the authority to address an application for the commutation of benefits rests only with the Director, and her designees, the district directors, as Section 9(g) references the discretionary authority of the Secretary of Labor. *See* 20 C.F.R. §702.142.

In this case, moreover, there was no actual application for the commutation of Lily's benefits pending. Employer has not applied for commutation of Lily's benefits; it had applied only for commutation of Shahira's benefits, and that application had been denied. Accordingly, as there was no application pending, and as he does not have the authority to address an application for the commutation of benefits, it was improper for the administrative law judge to address the issue. Nevertheless, we note that the administrative law judge correctly stated that any benefits due Lily's children may not be commuted because they are citizens of the United States; we affirm only that portion of his commutation findings. 33 U.S.C. §909(g). We vacate all other aspects of the administrative law judge's findings on commutation under Section 9(g). Should employer wish to apply for commutation of Lily's benefits, it may file an application with the district director who will decide whether commutation is appropriate.¹⁵

¹⁵In any case, the amount of death benefits due Lily cannot exceed 50 percent of the decedent's average weekly wage. 33 U.S.C. §909(b). If Lily were to remarry she would receive two years' compensation in a lump sum and no further benefits. *Id.*

Accordingly, the administrative law judge's determination that employer may not apply for commutation of Lily's benefits under Section 9(g) is vacated. In all other respects, the Decision and Order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge