

DORETHA GILLIAM)	
(Widow of LEONARD GILLIAM))	
)	
Claimant-Respondent)	DATE ISSUED:
)	
v.)	
)	
WESTERN UNION TELEGRAPH)	
COMPANY)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Decision and Order of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

Judy L. Woodall (Regan Associates, Chartered), Washington, D.C., for claimant.

Amy L. Epstein (Mell, Brownell & Baker), Washington, D.C., for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order (96-DCW-0013) of Administrative Law Judge Stuart A. Levin 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.* (1982), as extended by the District of Columbia Workmen's Compensation Act, 36 D.C.Code §§501, 502 (1973)(the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant is the alleged widow of Leonard Gilliam (decedent), who suffered a permanent total disability as the result of an injury sustained during the course of his employment on March 10, 1970, and died on December 5, 1995. The only issue before the administrative law judge was whether claimant is decedent's "widow" under Section 2(16), 33 U.S.C. §902(16), and thus entitled to death benefits under the Act. *See* 33 U.S.C. §909(1982) (amended 1984). In addressing this issue, the administrative law judge found the pertinent facts which we summarize as follows:

1. Claimant and decedent were legally married on October 31, 1949, and remained married until the time of his death;
2. Ten children were born of this union;
3. Decedent suffered a permanent total disability arising from a work injury in March 1970;
4. Sometime between 1971-1973, decedent left the marital home of his own volition; claimant has continuously lived in the marital home for approximately 35 years.
5. Decedent thereafter provided no support for his wife and their ten children;
6. Decedent was awarded permanent total disability compensation plus moving expenses on May 11, 1977;
7. Decedent moved to California sometime after the award but returned to the D.C. area at an unspecified time approximately four years later;
8. At that time decedent attempted to return to the marital home, stating "he wanted his home back," but claimant refused to allow him access;
9. Claimant described decedent as a controlling husband, a consideration which combined with his abandonment led to her refusal to condone his desertion and allow him to return to the home; claimant was afraid of decedent "to some extent;"
10. Claimant twice attempted to obtain a divorce;¹

11. Claimant never entered into another relationship; and

12. Claimant occasionally cooked meals for decedent, HT at 29, and socialized with him on family occasions. HT at 41-41.

Decision and Order at 3.

Based upon these facts, the administrative law judge found that decedent had deserted claimant and their ten children as evidenced by his leaving the marital home; moreover, the administrative law judge found that decedent's failure to provide financial support to either claimant or their children, coupled with his desertion of claimant and his controlling behavior towards her, constituted justifiable cause for their living apart. Next, the administrative law judge found that a conjugal nexus was maintained despite the separation as evidenced by claimant's not obtaining a divorce, by her remaining in the marital home, by her undertaking no other permanent relationship, by her continuing contacts with decedent, and by her maintaining all of the "attendant benefits and burdens the marital status imposed upon her until the date of Decedent's death." *See* Decision and Order at 4. Accordingly, the administrative law judge found claimant to be decedent's statutory widow and entitled to benefits under the Act.

On appeal, employer contends that the administrative law judge erred in finding claimant to be decedent's widow as defined by the Act; alternatively employer asserts that claimant did not bear her burden of establishing that she was living apart from decedent for justifiable cause or by reason of his desertion at the time of his death or that a conjugal nexus remained between herself and decedent. Claimant responds, urging affirmance.

Section 2(16) of the Act states that the term "widow or widower" includes "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." 33 U.S.C. §902(16). The plain language of Section 2(16) indicates that its clauses are to be read in the disjunctive; that is, a widow or widower is a wife or husband who, at the time of the employee's death, is living with the employee, or is dependent for support upon the employee, or is living apart from the employee for justifiable cause, or is living apart by reason of desertion. *See* 33 U.S.C. §902(16). *See also Griffith v. Bath Iron Works*, 25 BRBS 26 (1991); *Kennedy v. Container Stevedoring Co.*, 23 BRBS 33 (1989).

Employer initially argues that decedent did not desert claimant. Specifically, employer contends that decedent's move to California was purely motivated by health reasons. Moreover, employer asserts that, unlike the husband in *Hicks v. Southern Illinois University*, 19 BRBS 222 (1987),² decedent herein attempted to return to the marital home

and, therefore, had not deserted claimant. *General Dynamics Corp. v. Director, OWCP [Murphy]*, 585 F.2d 1168 (1st Cir. 1978).³ We reject employer's contention of error. Initially, we note that employer does not address the fact that decedent moved out of the marital home approximately six years prior to his temporary relocation to California. Moreover, employer does not account for the fact that decedent initiated no contact with claimant in the years prior to his death. Based upon a review of the record, we hold that the administrative law judge's finding that decedent deserted claimant is supported by substantial evidence in the record. Employer has not identified any error committed by the administrative law judge in weighing the evidence and in making credibility determinations. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Accordingly, we affirm the administrative law judge's finding that decedent deserted claimant, and his consequent finding that this desertion constituted justifiable cause for claimant and decedent to be living apart.

Employer additionally contests the administrative law judge's finding that a conjugal nexus existed at the time of decedent's death, noting that on two occasions claimant initiated divorce proceedings against decedent. The administrative law judge fully considered and rejected this argument, noting that claimant abandoned her first divorce proceeding at decedent's request, that claimant never prosecuted the second proceeding to completion, and that there is no indication that claimant intended to end the legal context of her marriage in the years immediately preceding decedent's death. *See* Decision and Order at 4. Moreover, the administrative law judge specifically found that claimant demonstrated a conjugal nexus by virtue of her continuing to live in the marital home and never entering into another permanent relationship. *Id.* Based upon the foregoing, we hold that the administrative law judge's finding of a conjugal nexus is supported by substantial evidence and is in accordance with law. *See Hicks*, 19 BRBS at 222. We therefore affirm the administrative law judge's finding in this regard.

Accordingly, the administrative law judge's Decision and Order Awarding benefits to claimant as the widow of decedent is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge