BRB No. 99-123

SHARLETHA SMITH (JOHN BEARD, deceased) Claimant-Petitioner v. SHELL OFFSHORE, INCORPORATED Self-Insured Employer-Respondent	))))))))))))	DATE ISSUED:_____ DECISION and ORDER

Appeal of the Order Granting Employer's Motion for Summary Judgment of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

James A. George (George & George, Ltd.), Baton Rouge, Louisiana, for claimant.

Jeffrey I. Mandel (Larzelere & Picou, L.L.P.), Metairie, Louisiana, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Order Granting Employer's Motion for Summary Judgment (98-LHC-1084) of Administrative Law Judge James W. Kerr, Jr., 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.* (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).

Claimant was born on November 19, 1975, and she contends she is the illegitimate

daughter of decedent who died during the course of his employment on February 2, 1978. Claimant filed a claim for death benefits on May 20, 1997, within one year of her 21st birthday. In her deposition, claimant stated she knew she was entitled to some sort of compensation when she was 17 years old; nevertheless, she did not file a claim at that time. Employer filed a motion for summary judgment on the ground that claimant's claim is untimely, as she should have filed her claim within one year of her 18th birthday.

The administrative law judge granted employer's motion. He noted that Section 13(a) of the Act, 33 U.S.C. §913(a), provides a one-year statute of limitations for the filing of a claim. However, he also noted that the statute of limitations does not begin to run against a minor until the minor "becomes of age" pursuant to Section 13(c), 33 U.S.C. §913(c). Because the word "minor" and the phrase "becomes of age" are not defined in the Act, the administrative law judge relied on the Act's definition of the word "child" to conclude that a minor "becomes of age" under the Act when he or she turns 18. Claimant was two years old when decedent died, she became aware of her potential entitlement to benefits when she was 17, but she did not file her claim until she was 21. Therefore, the administrative law judge found that, as claimant's claim was not filed within one year of her 18th birthday, her claim is untimely. Order at 2-3. Claimant appeals the order, and employer responds, urging affirmance.

Claimant contends the administrative law judge erred in using the Act's definition of "child" to define the phrase "becomes of age" in Section 13(c) and to conclude that claimant became of age when she turned 18. Specifically, claimant argues that state law must be used to define the term "of age" and that under Mississippi law a minor reaches the age of majority when he or she reaches the age of 21. Employer counters that it was reasonable to use the definition of "child," as it promotes uniformity and prevents forum shopping. In the alternative, employer argues that it has paid the full amount allowable under Section 9(b) of the Act, 33 U.S.C. §909(b), as it has paid, and continues to pay, benefits to decedent's widow and son.[1]

[1]The administrative law judge did not address this defense; however, employer raises it as additional legal support for affirming the administrative law judge's decision. *Farrell v. Norfolk Shipbuilding & Dry Dock Co.*, 32 BRBS 283 (1998); *Del Vacchio v. Sun Shipbuilding & Dry Dock Co.*, 16 BRBS 190 (1984).

Section 13(a) of the Act provides that a claimant must file her claim for benefits within one year of the time she became aware, or by the exercise of reasonable diligence should have become aware, of the relationship between the death and the decedent's employment. 33 U.S.C. §913(a). This provision, however, is tempered by Section 13(c) of the Act which tolls the statute of limitations in the case of a person who is "mentally incompetent or a minor" until such time as "the person who is mentally incompetent or a minor" obtains a guardian or representative or "in the case of a minor, if no guardian is appointed before [s]he becomes of age, from the date [s]he becomes of age." 33 U.S.C. §913(c); 20 C.F.R. §702.222(a).[2] As the administrative law judge noted, the Act does not define either the word "minor" or the phrase "becomes of age." *See* 33 U.S.C. §§902, 909, 911, 913.[3] Consequently, he used the definition for the word "child" in Section 2(14), 33 U.S.C. §902(14), to assist him in resolving the issue of whether claimant's claim in this case was filed within one year of the date she became "of age."

The Act defines the word "child," in pertinent part, as:

> a person who is under eighteen years of age, or who, though eighteen years of age or over, is (1) wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or (2) a student as defined [in Section 2(18)].

[2]There is no contention in this case that claimant had an appointed guardian.

[3]The term "minor" is used in Sections 9(b), 10(e) and 11 of the Act. 33 U.S.C. §§909(b), 910(e), 911 (Section 9(b) uses the term "minor child").

33 U.S.C. §902(14). Although the administrative law judge stated that use of this definition results in a child becoming "of age" at age 18, he neglected to consider that a child, under the Act's definition, can be almost any age depending on other factors. For instance, if the child is a student, he or she could remain a "child" until age 23, or if he or she is fully dependent due to physical or mental disability, he or she could remain a "child" permanently. 33 U.S.C. §902(14), (18). Moreover, the treatises indicate that "child" and "minor" are not necessarily interchangeable. 43 C.J.S. Infants §2 (1978); 42 Am. Jur. 2d Infants §1. This is borne out by the Act's definition of "child" which is much broader than the dictionary definition of "minor"[4] or Mississippi's definition of "minor." *See infra*. As Congress defined the word "child" in the Act, it could have used that term in Section 13(c) if it had meant for the terms to have the same meaning. Congress did not use the term "child" in Section 13(c), and we therefore hold that it was inappropriate for the administrative law judge to do so. Moreover, the purpose of the definition in Section 2(14) is to delineate who, in conjunction with Section 9 of the Act, are the legal beneficiaries of an award of death benefits. Thus, defining "minor" differently than "child" is not an inherent contradiction, as employer asserts. A person's status as a "minor" merely affects how and when a person might undertake actions on her own behalf while the status as a "child" affects the person's entitlement to support from others.[5] *Compare* 33 U.S.C. §909 (entitlement to death benefits) *with* 33 U.S.C. §§910(e) (benefits in own right as an injured worker), 911 (guardianship), 913(c) (time for filing claim). For these reasons, we reverse the administrative law judge's decision to grant employer's motion for summary judgment. Thus, in order to determine whether claimant's claim was timely filed, we must define "minor" and "of age" as those terms are used in the Act.

Claimant argues that Mississippi law should apply to define these terms. It is axiomatic under the rules of statutory construction that, when interpreting a statute, the starting point is the plain meaning of the words of the statute. *Mallard v. U.S. Dist. Ct. for the Southern Dist. of Iowa*, 490 U.S. 296 (1989); *United States v. Flowers*, 227 F.Supp. 1014 (W.D. Tenn. 1963), *aff'd*, 331 F.2d 604 (6th Cir. 1964). In this case, the word "minor" and the phrase "becomes of age" have not been defined by Congress. Undefined terms have been defined by using the common meaning of a term, *Jones v. St. John Stevedoring Co.*, 18

[4] *Webster's II New Riverside University Dictionary* defines "minor" as "[n]ot yet of legal age." *Black's Law Dictionary* defines "minor" as "an infant or person who is under the age of legal competence. One under twenty one . . . ."

[5] For this reason, employer's reliance on *Franklin v. Jackson*, 231 Miss. 497, 95 So.2d 794 (Miss. 1957), is misplaced, as that case concerned the age at which a "child" is no longer entitled to death benefits. Although a minor claimant (without a guardian) may wait until her majority to file a claim on her own behalf, the claim would be only for benefits that she would have been entitled to while she was a "child."

BRBS 68 (1986), *aff'd in pert. part sub nom. St. John Stevedoring Co., Inc. v. Wilfred*, 818 F.2d 397 (5th Cir.), *cert. denied*, 484 U.S. 976 (1987) (use common meaning to define "acknowledged"); *Bonds v. Smith & Kelly Co.*, 17 BRBS 170 (1985) (use common meaning to define "dependency"), or by relying on the appropriate state law when there is no common meaning, *Brooks v. General Dynamics Corp.*, 32 BRBS 114 (1998) (use state law to define "*in loco parentis*"); *Jordan v. Virginia Int'l Terminals*, 32 BRBS 32 (1998) (use state law to define "wife"). The Board has determined that resort to state law is appropriate for an undefined term if that term does not have a clear and common meaning and reasonable doubt exists as to the proper meaning. *Jones*, 18 BRBS at 70; *Bonds*, 17 BRBS at 172.

The Board previously has addressed the definition of the term "minor" as it appears in Section 10(e) of the Act, 33 U.S.C. §910(e).[6] In *Stokes v. George Hyman Const. Co.*, 14 BRBS 698 (1981), the Board held that the term "minor" is defined as one under the age of 21. The Board reasoned that Congress had not acted by statute to alter the common law age of majority, and it reasoned that a uniform age was desirable. *Stokes*, 14 BRBS at 701-702, citing *Trainer v. Ryan-Walsh Stevedoring Co.*, 8 BRBS 59 (1978), *rev'd in pert. part*, 601 F.2d 1306, 10 BRBS 852 (5th Cir. 1979)(Board's decision holding that "federal common law" applies to define terms "widow" and widower"). When the case came before the Board a second time, however, the Board held that the age of majority in that case was 18, the age of majority in the District of Columbia, inasmuch as the case arose under the District of Columbia Workmen's Compensation Act, and as this Act had been held to be a local, rather than a federal, law. *Stokes v. George Hyman Const. Co.*, 19 BRBS 110 (1986), *citing Hall v. C & P Telephone Co.*, 793 F.2d 1354 (D.C. Cir. 1986). More recently, the Board has overruled the decision in *Trainer*, 8 BRBS at 59, regarding the existence of "federal common law," and held that state law controls in defining the terms "husband" and "wife." *Jordan*, 32 BRBS at 35. Thus, as there is no "federal common law," and as the term "minor" is neither defined by the Act nor has a clear common meaning, we hold that use of state law is

[6]Section 10(e) states:

> If it be established that the injured employee was a minor when injured, and that under normal conditions his wages should be expected to increase during the period of disability the fact may be considered in arriving at his average weekly wages.

appropriate to determine when an individual is entitled to file a claim under the Act in her own right.

The age of majority is 21 under common law, and this rule remains intact unless changed by statute. 43 C.J.S. Infants §§2-3 (1978); 42 Am. Jur. 2d Infants §3 (1969). Some states have abrogated the common law and established the age of majority for particular purposes. *See, e.g.*, Ala. Code §26-10A-2 (Alabama: Uniform Transfers to Minors – age 19); Alaska Stat. §AS 47.12.990 (Alaska: Delinquent minors – age 18); Cal. Prob. Code §3901 (California: Probate law – age 18); Ill. Ann. Stat. ch. 760 §20/2 (Illinois: Uniform Transfers to Minors – age 21); Md. Code Ann. Est. & Trusts §13-401 (Maryland: Estates and Trusts – age 18); N.Y. Penal Law §235.20 (New York: Special offenses – age 17). Others have set the age of majority for their states in general. *See, e.g.*, Miss. Code Ann. §1-3-27 (Mississippi: All statutes – age 21); N.C. Gen. Stat. §48A-1 (North Carolina: Common law abrogated – age 18). Under Mississippi law, a person is considered a "minor" until his or her 21st birthday. Miss. Code Ann. §1-3-27 (1972);[7] *see also Nichols v. Tedder*, 547 So. 2d 766 (Miss. 1989) (age of majority for purposes of child care and maintenance under Miss. Code Ann. §§93-5-23, 93-11-65 is 21). As we have held that state law is appropriately applied to this question, claimant herein did not "become of age" until she turned 21.[8] Consequently, her claim, which was filed within one year of her 21st birthday, was filed in a timely manner, and she is entitled to proceed with her claim for benefits under Section 9. Therefore, we remand this case to the administrative law judge for consideration of the claim on the merits, including any defenses raised by employer.[9]

Accordingly, the administrative law judge's Order is reversed, and the case is remanded for consideration on the merits.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

[7]Section 1-3-27 specifically states: "The term 'minor,' when used in any statute, shall include any person, male or female, under twenty-one years of age."

[8]No party contends that the law of a state other than Mississippi would apply herein.

[9]As this case must be remanded, we will not address employer's argument that it has paid the maximum benefits for which it is liable under Section 9(b). The administrative law judge must address this issue in the first instance if he finds claimant is entitled to benefits.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge