

(CDC).¹ A July 17, 2003 death certificate indicated that the deceased was involved in a traffic accident at about 1:30 p.m. on July 16, 2003 and passed away at about 2:15 p.m. due to hemorrhagic shock caused by a ruptured spleen sustained in the accident.²

The record contains a September 8, 2003 invoice from the consulting firm, Globetrotter, Ltd., containing an entry for \$13,883.33 in services with the following entry, “Re: Contract No.: SUG-500-3-M-0078, Dated: November 14, 2002 for consulting services of Alan Graham to CDC, Uganda as construction and administration services for three and [a] half calendar month[s] starting April 9 to July 16, 2003.” The invoice was signed by a CDC official. The record also contains similar invoices covering monthly periods between November 8, 2002 and April 8, 2003 and documents, dated in March and May 2003, which were entitled “purchase order, receiving report and voucher” and detailed the cost of services provided by the deceased.

By informational letter dated June 23, 2004, the Office advised appellant that she would not qualify for survivor’s benefits because her husband was a contractor for the employing establishment, rather than an employee. The Office provided appellant 30 days to provide evidence in support of her claim. In a letter dated July 4, 2004, appellant, through her attorney, asserted that she had filed a valid claim for survivor’s benefits.

By decision dated July 27, 2004, the Office denied appellant’s claim for survivor’s benefits on the grounds that the deceased was not an “employee” within the meaning of the Act at the time of his death.

LEGAL PRECEDENT

The Act provides that the United States “shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.”³ A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that she or a decedent, as in the present case, was an “employee” within the meaning of the Act.⁴

¹ The record contains an October 24, 2003 legal document showing that appellant was authorized to administer the estate of the deceased.

² An April 1, 2004 report of the deceased’s supervisor contains a similar account of the July 16, 2003 accident. The record also contains a March 15, 2004 report of the physician who completed the death certificate which listed the same cause of death and noted that the deceased passed away before he was able to receive medical treatment.

³ 5 U.S.C. § 8102(a).

⁴ *Nettie Jackson (Lee F. Jackson)*, 53 ECAB 223 (2001).

For purposes of determining entitlement to compensation benefits under the Act, an “employee” is defined, in relevant part, as:

“(A) a civil officer or employee in any branch of the [g]overnment of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

“(B) an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service or authorizes payment of travel or other expenses of the individual...”⁵

With regard to whether an individual is a federal employee for purposes of the Act, the Board has noted that such a determination must be made considering the particular facts and circumstances surrounding his or her employment.⁶ The question of whether a person is an employee of the United States or an independent contractor is ultimately a question of fact to be decided on an individual basis in the particular case. Included among the many factors to be considered are the right of control of the work activities, the right to hire and fire, the nature of the work performed, the method of payment for the work, the length of time of the job and the intention of the parties.⁷ Other factors to be considered include whether the individual has been rendering service similar to the service of a civil employee and whether the employing establishment was authorized by statute to accept such services.⁸ The statute does not require that any written form of agreement be entered into by the employer and the individual providing services prior to acceptance of personal services by the employer.⁹ With regard to the party who paid the wages, the implication that a claimant was a federal employee cannot be drawn solely from the fact that his or her salary was derived from a fund to which the Federal Government contributed.¹⁰

ANALYSIS

Appellant filed a claim alleging that she was entitled to receive survivor’s benefits from the Office due to the July 16, 2003 death of her husband while he was employed as an engineer in Uganda, with the CDC. The Office denied her claim for survivor’s benefits on the grounds that the deceased was a contractor with the CDC rather than an “employee” within the meaning of the Act at the time of his death.

⁵ 5 U.S.C. § 8101(1).

⁶ *Donald L. Dayment*, 54 ECAB ____ (Docket No. 01-1846, issued January 21, 2003).

⁷ *Larry E. Young*, 52 ECAB 264 (2001). In particular, the Board has held that the right to control the work activities of the person is an important factor in determining an employer relationship. *Kasane Sawyer* (*Wallace B. Sawyer, Jr.*), 40 ECAB 1332 (1989).

⁸ *Sandra Davis*, 50 ECAB 450 (1999).

⁹ *Jane Doe*, 49 ECAB 646 (1998).

¹⁰ *David Nivens*, 46 ECAB 926 (1995).

The Board notes that there is insufficient documentation in the record to make a reasoned determination regarding whether the deceased was an “employee” within the meaning of the Act at the time of his death. As noted above, the question of whether a person is an employee of the United States or an independent contractor is ultimately a question of fact to be decided on an individual basis to include consideration of such factors, *inter alia*, as the right of control of the work activities, the right to hire and fire, the nature of the work performed, the method of payment for the work, the length of time of the job and the intention of the parties.¹¹ The only documents of record bearing on the deceased’s employment status are several invoices suggesting that the deceased provided consulting services to the CDC per a November 14, 2002 contract for the period November 8, 2002 until his death on July 16, 2003. The record does not contain a copy of the referenced contract or any other documents which would shed further light on the employment relationship between the deceased and the CDC. In particular, there is no evidence explaining in detail the nature of the work performed by the deceased and the amount of control he had over the work and employees of the CDC.

Under the Act, although it is the burden of an individual to establish her claim, the Office also has a responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.¹² Therefore, the case should be remanded to the Office for further development of the factual evidence regarding the question of whether the deceased was an “employee” within the meaning of the Act at the time of his death. After such development it deems necessary, the Office should issue an appropriate decision regarding the deceased’s employment status and the validity of appellant’s claim for survivor’s benefits in accordance with the relevant standards for such determinations.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether the Office properly denied appellant’s claim for survivor’s benefits on the grounds that the deceased was not an “employee” within the meaning of the Act at the time of his death. The case should be remanded to the Office for further factual development to be followed by an appropriate decision.

¹¹ See *supra* notes 6 through 10 and accompanying text.

¹² *Willie A. Dean*, 40 ECAB 1208 (1989); *Willie James Clark*, 39 ECAB 1311 (1988).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 27, 2004 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: June 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member