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**UTAH LABOR COMMISSION**

**KELARI MECHAM, personal  
representative of the estate of  
THOMAS KELLER, deceased,**

**Applicant,**

**vs.**

**SCOTTS ROUSTABOUT SERVICE,  
TRAVELERS INSURANCE CO., and  
EMPLOYERS REINSURANCE FUND,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 05-0406**

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Kelari Mecham, in her capacity as personal representative of the estate of Thomas Keller, deceased, (“the Estate” hereafter) asks the Utah Labor Commissioner to review Administrative Law Judge Sessions' dismissal of the Estate’s claim for permanent total disability compensation under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated, on behalf of Mr. Keller.

The Labor Commissioner exercises jurisdiction over this motion for review pursuant to § 63G-4-301 of the Utah Administrative Procedures Act and § 34A-2-801(3) of the Utah Workers Compensation Act.

**BACKGROUND**

While employed by Scotts Roustabout Services on July 25, 1976, Mr. Keller was injured in a work-related accident. In 1978, the Utah Industrial Commission (predecessor to the current Labor Commission) approved an agreement between Mr. Keller, Scotts Roustabout Services, and its insurance carrier, Travelers Insurance Co., (referred to jointly as “Scotts” hereafter) for payment of permanent partial disability compensation to Mr. Keller.

In December 2000, Mr. Keller filed an application for hearing with the Commission claiming permanent total disability compensation from Scotts and the Employers’ Reinsurance Fund (“ERF”)<sup>1</sup> for permanent total disability compensation. Mr. Keller died on September 3, 2002. On October 23, 2002, Judge Eblen dismissed Mr. Keller’s claim on the grounds that the claim was extinguished by his death. Judge Eblen’s ruling was not contested and became final on November 23, 2002.

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<sup>1</sup> Under the law in effect at the time of Mr. Mecham's accident in 1976, the ERF is liable for a portion of the benefits paid to individuals who are permanently and totally disabled as a result of work-related injuries. See § 34A-2-413(3) of the Utah Workers’ Compensation Act.

On April 25, 2005, the Estate filed a new application for hearing, seeking to compel Scotts and the ERF to pay permanent total disability compensation to the Estate for Mr. Keller's alleged permanent total disability. Scotts and the ERF moved for dismissal of the application. On June 16, 2006, Judge Sessions granted the motions on the grounds, among others, that the Estate was not entitled to pursue a claim for permanent total disability compensation under the circumstances of this case.

In its motion for review in this matter, the Estate challenges each of the grounds upon which Judge Sessions dismissed the Estate's application. However, because the Commission concludes that Judge Sessions was correct in his determination that the Estate is not entitled to pursue benefits in this matter, the Commission limits its discussion to that that issue.

### **DISCUSSION**

Prior to 2003, Utah's appellate courts had ruled that "[t]he right to compensation for injuries is a right personal to the employee and unless payments have accrued or a determination has been made by the Commission there is no right to which the personal representative or a dependent can succeed. . . ." *Pacific States Cast Iron Pipe Co. v. Industrial Commission*, 218 P.2d 970, 974 (Utah 1950).

As already noted, Mr. Keller had filed a claim for permanent total disability compensation in December 2000, but died in 2002 while the foregoing rule was in effect. For that reason, Judge Eblen dismissed Mr. Keller's then-pending claim. As also noted, there was no effort to appeal Judge Eblen's decision. Consequently, the determination that Mr. Keller's claim terminated upon his death became final and binding on November 23, 2002, 30 days after Judge Eblen issued the decision.

The Commission notes the Estate's effort to revive this matter by relying on § 34A-2-423 of the Workers' Compensation Act. However, that statute was not enacted until 2003, after Judge Eblen's ruling already had become final. The Commission concludes that, under these circumstances, § 34A-2-423 does not apply to the Estate's claim.

### **ORDER**

The Commission affirms Judge Sessions' decision. It is so ordered.

Dated this 31<sup>st</sup> day of March, 2009.

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Sherrie Hayashi  
Utah Labor Commissioner

**IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.**

### **NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.