CASE NO. 5988 CRB-3-15-2 : COMPENSATION REVIEW BOARD
CLAIM NO. 300093183

BELINDA SNEED : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : FEBRUARY 18, 2016

PSEG POWER LLC OF CT
& UNITED ILLUMINATING
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLANT

and

W.T. GRANT
EMPLOYER

and

LIBERTY MUTUAL INSURANCE
INSURER
RESPONDENTS-APPELLANTS

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant was represented by Catherine M. Ferrante, Esq., Early, Lucarelli, Sweeney & Meisenkothen, LLC, One Century Tower, 11th Floor, 265 Church Street, P.O. Box 1866, New Haven, CT 06508-1866.

Respondent United Illuminating was represented by Neil Ambrose, Esq. and James A. Mongillo, Esq., Letizia, Ambrose & Falls, 667-669 State Street, 2nd Floor, New Haven, CT 06511.

Respondents W.T. Grant and Liberty Mutual Insurance were represented by Maribeth M. McGloin, Esq., Williams, Moran, LLC, P.O. Box 550, Fairfield, CT 06430.

Respondent Appellee Second Injury Fund was represented by Lawrence G. Widem, Esq., Assistant Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120.

This Petition for Review from the January 30, 2015 Finding and Order (Re: Motions to Dismiss) of David W. Schoolcraft, Commissioner acting for the Eighth District, was heard on September 25, 2015 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Randy L. Cohen and Stephen M. Morelli.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have petitioned for review from the January 30, 2015 Finding and Order (Re: Motions to Dismiss) of David W. Schoolcraft, the Commissioner acting for the Eighth District. We find no error and accordingly affirm the decision of the trial Commissioner.[1]

The trial Commissioner identified the issue for analysis as follows: "Should the claim for survivor benefits be dismissed on the grounds that an unmarried domestic partner of a deceased worker cannot, as a matter of law, qualify as a dependent in fact for purposes of C.G.S. section 31-306?" Finding and Order, ¶ II, p. 2. The facts in this matter are not in dispute. On April 17, 2008, the claimant's decedent, Raymond J. Sneed, Jr., [hereinafter "decedent"] filed several Forms 30C alleging that he had developed lung cancer as a result of exposure to asbestos while employed by the respondent employers. The date of injury for the occupational disease claim is April 18, 2006.

On October 6, 2006, the decedent married Belinda Jean Pierce [hereinafter "claimant"] in the town of Fairfield. The decedent died on June 5, 2010, and on February 10, 2011, the claimant filed several Forms 30D alleging that the decedent's

[1] We note that two motions for extension of time were granted during the pendency of this appeal.

death was the result of his cancer which, in turn, was the result of work-related asbestos exposure while employed by the respondent employers. The claimant is seeking payment of survivor's benefits pursuant to the provisions of § 31-306 C.G.S.[2]

On the date of injury for the lung cancer claim, April 18, 2006, the decedent was not married to the claimant. The claimant alleges that on this date, she was living with the decedent in a domestic relationship and was wholly or partly dependent upon the decedent's income. As such, she contends she is a dependent in fact as defined by § 31-275(7) C.G.S. of the Workers' Compensation Act for purposes of entitlement to survivor's benefits.[3] On May 13, 2014, the respondent Second Injury Fund [hereinafter "Fund"] filed a motion to dismiss challenging the claimant's eligibility for survivor's benefits. The parties have agreed that the motion to dismiss requires adjudication before proceeding to litigation on the merits of the claim. Respondents PSEG Power, W.T. Grant and Liberty Mutual Insurance Company have also moved to dismiss the claim. On September 17, 2014, a formal hearing was held to allow oral argument on the motion to dismiss. As of that date, no evidentiary hearing had been held on the merits of

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[2] Section 31-306 C.G.S. (Rev. to 2006) states, in pertinent part: "(a) Compensation shall be paid to dependents on account of death resulting from an accident arising out of and in the course of employment or from an occupational disease as follows:

(1) Four thousand dollars shall be paid for burial expenses in any case in which the employee died on or after October 1, 1988. If there is no one wholly or partially dependent upon the deceased employee, the burial expenses of four thousand dollars shall be paid to the person who assumes the responsibility of paying the funeral expenses.

(2) To those wholly dependent upon the deceased employee at the date of the deceased employee's injury, a weekly compensation equal to seventy-five per cent of the average weekly earnings of the deceased calculated pursuant to section 31-310, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contributions Act made from such employee's total wages received during the period of calculation of the employee's average weekly wage pursuant to said section 31-310, as of the date of the injury but not more than the maximum weekly compensation rate set forth in section 31-309 for the year in which the injury occurred or less than twenty dollars weekly…."

(3) If the surviving spouse is the sole presumptive dependent, compensation shall be paid until death or remarriage."

[3] Section 31-275(7) C.G.S. (Rev. to 2006) defines "dependent in fact" as "a person determined to be a dependent of an injured employee, in any case where there is no presumptive dependent, in accordance with the facts existing at the date of the injury."

either the decedent's or the claimant's claim. The trier accepted the truth of the factual allegations of the claimant only for the purposes of the motion to dismiss.

In his Finding and Order, the trier noted that the Fund refers to the claimant as the decedent's "common law wife." Connecticut does not recognize common-law marriage and the claimant concedes that she was not the decedent's legal wife at the time of his injury. Rather, she claims that she can prove that she was a member of the decedent's family and, as such, is entitled to prove that she is a dependent in fact as contemplated by § 31-275(7) C.G.S. The respondents claim that because the claimant is not a blood relative of the decedent and was not his legal spouse at the time of the injury, by operation of law she cannot be considered his dependent in fact and her claim should therefore be dismissed.

The trial Commissioner determined that the Workers' Compensation Act "does not expressly preclude a dependent-in-fact claim by someone who happens to be a domestic partner of an injured worker." Finding and Order, ¶ III.A, p. 2. Noting that § 31-275(6) C.G.S. defines the term "dependent" as "a member of the injured employee's family or next of kin who was wholly or partly dependent upon the earnings of the employee at the time of the injury," the trier stated that there are two classes of dependents contemplated by § 31-306 C.G.S.: presumptive dependents and dependents in fact. Section 31-275(19) C.G.S. defines "presumptive dependents" as follows:

> the following persons who are conclusively presumed to be wholly dependent for support upon a deceased employee: (A) A wife upon a husband with whom she lives at the time of his injury or from whom she receives support regularly; (B) a husband upon a wife with whom he lives at the time of her injury or from whom he receives support regularly; (C) any child under the age of eighteen, or over the age of eighteen but physically or mentally incapacitated from earning, upon the parent with whom he is living or from

> whom he is receiving support regularly, at the time of the injury of the parent; (D) any unmarried child who has attained the age of eighteen but has not attained the age of twenty-two and who is a full-time student, upon the parent with whom he is living or from whom he is receiving support regularly, provided, any child who has attained the age of twenty-two while a full-time student but has not completed the requirements for, or received, a degree from a postsecondary educational institution shall be deemed not to have attained the age of twenty-two until the first day of the first month following the end of the quarter or semester in which he is enrolled at the time, or if he is not enrolled in a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever occurs first.

Section 31-275(19) C.G.S. (Rev. to 2006)

The trier observed that had the claimant been legally married to the decedent and living with him on the date of the injury, she would automatically be deemed wholly dependent as contemplated by § 31-275(19) C.G.S. and therefore entitled to collect the full compensation rate until her death or remarriage pursuant to the provisions of § 31-306(a) C.G.S.[4] However, because the claimant and decedent were not married as of the date of the injury, if the claimant is to receive survivor's benefits, then it must be as a dependent in fact, in which case her eligibility for benefits would be limited to 312 weeks and require proof of actual dependency.[5] The claimant contends that because the decedent had no presumptive dependents, she is entitled to offer evidence that she was a dependent in fact. However, the trial Commissioner determined that in order to be found

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[4] See footnote 2, supra.

[5] Section 31-306(a)(6) C.G.S. (Rev. to 2006) states: "In all cases where there are no presumptive dependents, but where there are one or more persons wholly dependent in fact, the compensation in case of death shall be divided according to the relative degree of their dependence. Compensation payable under this subdivision shall be paid for not more than three hundred and twelve weeks from the date of the death of the employee. The compensation, if paid to those wholly dependent in fact, shall be paid at the full compensation rate. The compensation, if paid to those partially dependent in fact upon the deceased employee as of the date of the injury, shall not, in total, be more than the full compensation rate nor less than twenty dollars weekly, nor, if the average weekly sum contributed by the deceased at the date of the injury to those partially dependent in fact is more than twenty dollars weekly, not more than the sum so contributed."

a dependent in fact pursuant to § 31-275(7) C.G.S., she must first prove that she is a "dependent" as defined by § 31-275(6) C.G.S., which in turn requires the claimant to prove that she was (1) either a member of the decedent's family or his next of kin, and (2) wholly or partially dependent upon his wages.

The trier indicated that the claimant does not contend she is a blood relative of the decedent or his next of kin but, rather, that she was a member of his family. Noting that there is no language in the provisions of the Act stating that an unmarried domestic partner is excluded from the definition of "dependent," the trier thus concluded that "[i]f the claimant is to be denied her opportunity to present evidence it must be because she cannot, as a matter of law, be deemed [a] member of the decedent's family." Finding and Order, ¶ III.A., p. 3.

The trier also found that "[t]here is no case law holding that a 'common law spouse' cannot be found to be a dependent in fact." Id., ¶ III.B., p. 3. Moreover, although the Fund cited Wislocki v. Prospect, 72 Conn. App. 444 (2002) for the proposition that "[a] common law spouse cannot be a member of the deceased worker's family or next of kin," July 21, 2015 Brief of the Respondent Appellee Second Injury Fund, p. 16, the trial Commissioner observed that he found nothing in Wislocki, wherein the Appellate Court determined that a widow was ineligible for survivor's benefits as a presumptive dependent because she and the decedent were not married on the decedent's date of injury, which would substantiate that assertion. The trial Commissioner, remarking that he found Wislocki relevant only "[t]o the extent that [the case] stands for the proposition that a commissioner cannot expand entitlement to dependent benefits beyond the perimeters set out in the statute," Finding and Order, ¶ III.B., p. 4, concluded

that the case offered no guidance relative to the issue of whether the claimant should be allowed to offer evidence that she was a member of the decedent's family at the time of his injury.

The trial Commissioner also rejected the Fund's assertion that an award of survivor's benefits to the instant claimant on the basis of dependency in fact would constitute an "end run" around Connecticut's long-established policy of not recognizing common-law marriage. Finding and Order, ¶ III.B., p. 4. The trier pointed out that simply because an individual does not meet the definition of a "presumptive dependent," that does not "logically dictate" that the individual cannot meet the definition of a "dependent," which "turns on proof of actual financial dependency and membership in the injured worker's 'family.'" Finding and Order, ¶ III.B., p. 4; see also § 31-275(6) C.G.S.

The trial Commissioner also determined that "[f]or purposes of dependent-in-fact claims, the definition of 'family' is not, and never was, limited to blood relatives and legally married spouses." Finding and Order, ¶ III.C., p. 4. The trier noted that in Piccinim v. Connecticut Light & Power Co., 93 Conn. 423 (1919), our Supreme Court, in its analysis of whether the claimant's illegitimate children "were entitled to be regarded as the deceased's dependents," id., 424, explained that the word "family" had different legal meanings in different contexts. At times, the focus was on "the collective quality of the residence … and the unity of their domestic government and control." Id., 425. In other situations, the focus was on the nature of the residential unit and the blood relationships of the parties. However, because the children involved in Piccinim met each of the possible definitions of "family," the court held that the illegitimate children

were entitled to claim dependent benefits but did not articulate a specific definition of the word "family" for workers' compensation claims.

The trial Commissioner also reviewed Northrup v. The Merritt-Chapman and Scott Corporation, 106 Conn. 233 (1927). In Northrup, the claimant lived with her husband, a nineteen-year-old son and a nine-year-old daughter in New London. The claimant's mother lived in Mystic and rented a room in her home to an occasional boarder, an unmarried seaman with no children. When the claimant and her daughter stayed at the claimant's mother's home, the boarder would pay for the daughter's board, and also paid the tuition to send the claimant's daughter to a private boarding school. After the boarder died, the claimant sought survivor's benefits on the basis that the decedent had "practically supported her daughter since she was quite young," id., 234, and she was dependent upon the decedent's contribution to her daughter's education. The court, unpersuaded that the claimant was a dependent, stated:

> To come within this definition, it is not enough that the claimant received and relied upon payments made to her by the deceased, but it must also appear that she was one of his next of kin or a member of his family. Next of kin she surely was not. Neither she nor her daughter were related to him by blood or affinity. They were never members of the same household with him, except as occasionally they may have chanced to be at the home of the claimant's mother at the same time that he was occupying a room there, apparently as a boarder; there was no such collectivity of residence and unity of headship as we have held to constitute a proper basis for including within a family group persons not related to each other. No test which we have ever recognized or could in reason recognize for determining whether certain individuals constitute a family would suffice to bring the claimant or her daughter into that relationship with the deceased.

Id., 235.

Having reviewed the Northrup holding, the trial Commissioner concluded that although "compensation was denied in that case, the Court clearly interpreted the term 'family' was not coequal with kinship. Rather, the indicia of family involved such things as common residence and a common head of household." Finding and Order, ¶ III.C., p. 5.

The trial Commissioner also reviewed our Supreme Court's analysis of the definition of family in Goshorn v. Roger Sherman Transfer Co., 131 Conn. 200 (1944). In Goshorn, the court was called upon to decide whether a decedent's mother-in-law, who had cared for her son-in-law and his son and "was viewed as the *de facto* 'mother of the family,'" id., could claim entitlement to survivor's benefits as a dependent in fact. The Goshorn trial Commissioner awarded the mother-in-law death benefits, and the respondents appealed, contending that the claimant did not meet the definition of "family" or "next of kin." The Supreme Court sustained the award, stating:

> We by no means hold that by reason of the mere fact that the plaintiff was a mother-in-law she was a member of the family, but where, as in this case, the mother-in-law had lived with her son-in-law over a long period of years, had occupied a place in the household analogous or appropriate to that of his own mother, had brought up his child and had become without funds and dependent upon him for support, she comes within the fair intent of the act as a dependent.

Id., 206.

Having reviewed the court's analysis in Goshorn, the instant trial Commissioner noted that the court "focused on the common residence and the functional relationships of the members of the household." Finding and Order, ¶ III.C., p. 5. The Supreme Court also "stopped short of giving a bright-line definition of family and, in so doing, made it clear the remedial goals of the Workers' Compensation Act dictate a flexible definition of

'family' that goes beyond blood and marriage licenses." Id., 5-6. The trier also found pertinent the grounds upon which the court distinguished its decision to sustain an award of benefits in Goshorn from the trial Commissioner's decision to deny benefits to the "decedent's unlawful consort" in Piccinim.[6] "The Court explained that the paramour in Piccinim was denied benefits not because she was not 'family,' but because her unmarried presence in the decedent's household was illegal, and she ought not to be allowed to benefit from her illicit conduct." Finding and Order, ¶ III.C., p. 6. See also Piccinim, supra, 427. In Goshorn, supra, however, the court held that because the mother-in-law's relationship with the decedent was not illegal, she could not be denied benefits on that basis.

The trial Commissioner also indicated that in 1969, the legislature repealed most of the provisions of Chapter 944 of the General Statutes, entitled "Offenses against Chastity."[7] As of October 1, 1971, cohabitation was no longer a crime and, as such, "[r]egardless of one's personal sense of morality, if Brenda Sneed was living in a domestic relationship with the decedent that included a sexual component, it was not an illegal relationship and she cannot be precluded from seeking benefits as a dependent in fact on [that] basis alone." Id, 6. Finally, the trial Commissioner rejected the respondent's narrow definition of "family" in light of our Supreme Court's decision in Kerrigan v. Commissioner of Public Health, 289 Conn. 135 (2008), pointing out that it is now highly unlikely that "a person who was in a long-term, committed, same-sex domestic partnership with a worker who got injured in 2007, and who legally married

[6] In Piccinim v. Connecticut Light & Power, Co., 93 Conn. 423 (1919), the appeal was brought by the respondents challenging the trier's award of benefits to the decedent's children; the trial commissioner did not award benefits to the children's mother.
[7] See P.A. 69-828 § 214.

that worker at the earliest opportunity after Kerrigan, would be forever disqualified from claiming to be a dependent in fact should that worker eventually die today from the 2007 injury." Id, 6.

Based on the foregoing legal analysis, the trial Commissioner concluded that "the question of whether the claimant was a member of Mr. Sneed's family at the time of his injury is a question of fact that can only be determined upon presentation of evidence by the parties. I do not know if the claimant can prove that she was a member of Raymond Sneed's family at the time of his injury, but I am satisfied, however, that she is entitled to present her claim at a formal hearing." Id., ¶ IV., pp. 6-7.

The Fund filed a Motion for Reconsideration which was denied, and a Motion for Articulation which was denied in part and granted in part, and this appeal followed.[8] On appeal, the Fund contends that the trial Commissioner erred in concluding that a "common law spouse is still entitled to come before the workers' compensation commission and prove that she/he was a dependent in fact as of the date of injury." July 21, 2015 Brief of the Respondent Appellee Second Injury Fund, p. 3.

> The question of whether a purported surviving common law spouse is a family member who is eligible for survivor benefits under Conn. Gen. Stat. §31-306 is a question of law. The resolution of that legal question is dependent upon the determination of two factual questions: (1) was the claimant a common law spouse on the injured employee's date of injury and (2) did the claimant have the right to support and was he/she in fact dependent on the injured employee.

Id., 4-5.

[8] In his May 28, 2015 Ruling on Motion for Articulation, the trial Commissioner stated that he had made no determination regarding the issue of the constitutionality of the respondents' interpretation of § 31-275(6) C.G.S. and discussed the basis for his rejection of the Fund's motion for reconsideration.

The Fund also points out that the cases relied upon by the trial Commissioner all shared "one important feature. In each instance where benefits were awarded, the claimant was a blood or legal relative to the deceased employee. Parents, in laws and illegitimate children can all trace their family relationship back to the deceased employee by blood or a legal relationship, recognized under Connecticut law." Id., 7. Similarly, respondents W.T. Grant and Liberty Mutual Insurance Company point out that:

> While the cases [relied upon by the trial commissioner] go on to discuss additional factors to be considered such as a collectivity of residence, unity of headship and functionality of the relationships between the individuals, the only individuals who were successful in being determined to be within the definition of "family" were persons who were related in a legally recognized way through blood, contract or marriage and who also lived within a family group.

August 11, 2015 Brief of the Respondent-Appellant United Illuminating, p. 4.

As such, respondents W.T. Grant and Liberty Mutual Insurance Company contend that the trier's decision to allow the claimant to assert a claim for survivor's benefits as a dependent in fact constituted error, given that "[o]n the date of injury, [the claimant] was not related to [the decedent] through marriage, blood, contract, affinity or adoption." Id., 6.

Respondent United Illuminating [hereinafter "United"] has also appealed the Finding and Order, contending that "[t]he clear and unambiguous wording of C.G.S. §31-275(6) and C.G.S. §31-275(7) requires that to be a dependent-in-fact, the Claimant must first be a dependent, which in turn requires her to be a member of the Decedent's family or his next of kin."[9] August 11, 2015 Brief of the Respondent Appellant United

[9] United points out that § 5-248(h) C.G.S. defines the term "next of kin" as a person's "nearest blood relative" other than the spouse, parent, son or daughter. August 11, 2015 Brief of the Respondent Appellant United Illuminating, p. 4.

Illuminating, p. 4. Thus, given that the claimant "was not a member of the family, or blood relative on the date of injury, she cannot satisfy the requirements of being a 'dependent-in-fact.'" Id. United also claims as error the trial Commissioner's decision to expand the definition of "family" such that a claimant involved in a relationship not recognized by the State of Connecticut can pursue a claim for dependency benefits. In addition, United argues that "[t]he trial Commissioner's expanded definition of "family" – which essentially requires only that the Claimant live under the same roof to satisfy being a 'family member' – opens up a veritable Pandora's Box and a potential flood of litigation of dependent-in-fact claims that was never contemplated by the General Assembly." Id., 8-9.

We begin our analysis of this matter by noting that we have been asked to rule on a Motion to Dismiss, which is interlocutory in nature, rather than a Finding.

> A motion to dismiss ... properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.... [O]ur review of the trial court's ultimate legal conclusion and resulting [denial] of the motion to dismiss will be de novo.... Factual findings underlying the court's decision, however, will not be disturbed unless they are clearly erroneous.... The applicable standard of review for the denial of a motion to dismiss, therefore, generally turns on whether the appellant seeks to challenge the legal conclusions of the trial court or *its factual determinations.* (Citations omitted; emphasis added; internal quotation marks omitted.)

Deutsche Bank Nat. Trust Co. v. Bialobrzeski, 123 Conn. App. 791, 795 (2010), *quoting* State v. Bonner*,* 290 Conn. 468, 477–78 (2009).

It is of course well-settled that § 31-301(a) C.G.S. confers upon this board the ability to hear an appeal "from a decision of the commissioner upon a motion." Moreover, in Poventud v. Eagle Four, 6 Conn. Workers' Comp. Rev. Op. 72, 775

CRD-5-88-10 (December 30, 1988), we observed that "[c]ontrary to appellate practice in the courts, § 31-301(a) C.G.S. does contemplate [this board's] jurisdiction over interlocutory rulings in the districts as long as the motion in question "has either a statutory, regulatory or due process basis." Id. However, in Dixon v. United Illuminating Co., 14 Conn. Workers' Comp. Rev. Op. 215, 1996 CRB-4-94-3 (August 4, 1995), we also remarked that:

> common sense dictates that there must be some limit to the types of interlocutory appeals that should be permitted in workers' compensation proceedings. Otherwise, the policy behind the Workers' Compensation Act cited in Poventud, supra, i.e., "to provide an injured worker with a speedy remedy and resolution of his claim," could be confounded by an endless stream of appeals to and remands from the CRB, delaying an award of benefits *ad infinitum*.

Dixon v. United Illuminating Co., 14 Conn. Workers' Comp. Rev. Op. 215, 218, 1996 CRB-4-94-3 (August 4, 1995)(Nancy A. Brouillet, Commissioner, concurring in part and dissenting in part).

Returning to the matter at bar, as previously stated herein, the issue identified by the trial Commissioner was: "Should the claim for survivor benefits be dismissed on the grounds that an unmarried domestic partner of a deceased worker cannot, as a matter of law, qualify as a dependent in fact for purposes of C.G.S. Section 31-306?" Finding and Order, ¶ II, p. 2. After reviewing pertinent case law, the trial Commissioner ultimately concluded:

> the question of whether the claimant was a member of Mr. Sneed's family at the time of his injury is a question of fact that can only be determined upon presentation of evidence by the parties. I do not know if the claimant can prove that she was a member of Raymond Sneed's family at the time of his injury, but I am satisfied, however, that she is entitled to present her claim at a formal hearing.

Id., ¶ IV., pp. 6-7.

In Powers v. Hotel Bond Co., 89 Conn. 142 (1915), our Supreme Court stated, "[q]uestions of dependency are … by the Act made questions of fact." Id., 152. It is equally well-settled that:

> [t]he status of a dependent in fact involves three factual elements: (1) reliance on the contribution of the decedent for necessary living expenses, judged by the class and position in life of the claimant; (2) a reasonable expectation that the contributions will continue; and (3) an absence of sufficient means at hand for meeting these living expenses.

Wheat v. Red Star Exp. Lines, 156 Conn. 245, 251 (1968). See also Powers, supra.

Nevertheless, in order to be deemed a dependent in fact, the claimant must first establish that she comes within the definition of "dependent" pursuant to § 31-275(6) C.G.S., which requires the claimant to prove that she was (1) either a member of the decedent's family or his next of kin, and (2) wholly or partially dependent upon his wages. "To come within this definition, it is not enough that the claimant received and relied upon payments made to her by the deceased, but it must also appear that she was one of his next of kin or a member of his family." Northrup, supra, 235. As such, we therefore agree with the Fund that "[d]ependency only becomes an issue of fact after the claimant qualifies as a member of an eligible class." September 18, 2015 Reply Brief of Respondent Appellee Second Injury Fund, p. 6. "Dependency in fact is not an open ended miscellaneous class that is open to anyone who received some sort of financial support from the injured worker during his/her life time. It is a statutory class which is limited to those who fall within the precise limits of the statute." Id., 6.

The Fund contends that the issue before [this board] is "whether the trial commissioner's legal determination that the statutory term "dependent in fact" included within that eligible class Connecticut common law spouses was legally correct." Id., 5.

We disagree with this interpretation of the trial Commissioner's findings; he made no such determination. Rather, the trier agreed to take additional evidence on the threshold issue of whether the claimant can prove she is a member of the decedent's family and, as such, satisfy the definition of "dependent," as contemplated by § 31-275(6) C.G.S. Only after the claimant has made a satisfactory showing that she is a "dependent" can she then qualify as a matter of law to bring the claim for benefits as a dependent in fact pursuant to § 31-275(7) C.G.S.

> The Compensation Statute is designed to compensate in a measure for the pecuniary loss sustained by reason of the death of a person to whom the claimant looked for support and while the statute will be liberally construed to effectuate that purpose, it cannot be extended by the courts to include any persons not mentioned in the act, however deserving they may be and however great may be their loss.

Wislocki, supra, at 452, *citing* 9 Schneider, Workmen's Compensation Text (Perm. Ed.) § 1901, p. 6.

As the claimant accurately points out, "[t]he commissioner specifically stopped short of ruling at this time that 'family' includes the Claimant because there are no facts in evidence on which to so rule, but simply that she is allowed to present her case for why it should." September 1, 2015 Brief of the Claimant Appellee, Belinda Sneed, p. 5. The claimant is also correct in arguing that "[t]he respondent-appellants do not cite a single precedential case which would apply to categorically bar Mrs. Sneed's circumstance from inclusion in the definition of *family*." (Emphasis in the original.) Id., 8. We agree. As such, we deem the instant appeal premature and affirm the decision of the trial Commissioner to allow the claimant to present evidence on the threshold issue of whether she was a member of the decedent's family, and, therefore, qualified to proceed in her claim for dependency benefits as a "dependent" as contemplated by § 31-275(6) C.G.S.

There is no error; the January 30, 2015 Finding and Order (Re: Motions to Dismiss) of David W. Schoolcraft, the Commissioner acting for the Eighth District, is accordingly affirmed.

Commissioners Randy L. Cohen and Stephen M. Morelli concur.