

July 29, 2005

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RE: HF No. 233, 2004/05 – In Re: Craig Mowrer, deceased, and Kellie Mowrer, Individually and on behalf of Brandon Mowrer, a minor child v. R.C.S. Construction, Inc., and First Dakota Indemnity

Dear Counsel:

I am in receipt of Employer/Insurer's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. I am also in receipt of Claimant's response thereto.

The above-referenced matter involves only benefits arising out of the death of Craig Mowrer. Kellie Mowrer seeks a partial lump sum distribution of death benefits payable in the future to her and to Brandon Mowrer.

SDCL 62-4-17 specifically provides that all death benefits be paid in installments. The statute governing lump sum distributions of workers' compensation benefits provides in relevant part:

Any compensation due to beneficiaries under §§ 62-4-12 to 62-4-22, inclusive, may not be paid in a lump sum, except for the remarriage lump sum provided in § 62-4-12.

There is no question that death benefits are due Kellie and Brandon. Craig Mowrer died as a result of injuries arising out of and in the course of his employment with Employer.

There is no discretion vested with the Department regarding payment of death benefits. A partial lump sum cannot be approved in this situation. Employer/Insurer's Motion to Dismiss must be granted.

Employer/Insurer shall submit a proposed order conforming to this decision for the Department's signature.

Sincerely,

Heather E. Covey  
Administrative Law Judge