

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JEREMY ORTIZ, Deceased)	
Claimant)	
V.)	
)	AP-00-0493-442
DISCOVERY DRILLING CO. INC.)	CS-00-0490-084
Respondent)	
AND)	
)	
NEW HAMPSHIRE INSURANCE COMPANY)	

ORDER

Respondent appealed the November 17, 2025, Order for Penalties by Administrative Law Judge (ALJ) Bruce E. Moore.

APPEARANCES

D. Shane Bangerter appeared for Claimant. Christopher J. McCurdy appeared for Respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as did the ALJ, consisting of the transcript of the Motion Hearing from September 3, 2025, with exhibits attached and the documents of record filed with the Division. The Board also considered the parties' briefs.

This matter was placed on the Board's summary calendar without oral argument.

ISSUES

1. Does the settlement allow Respondent to terminate benefits to the wholly dependent child who is entitled to continued benefits under K.S.A. 44-510b(a)(3), despite the \$300,000 cap being reached?

2. Should penalties be assessed against Respondent for failing to pay benefits to the wholly dependent child?

FINDINGS OF FACT

On July 1, 2015, a settlement hearing was held to settle the workers compensation death claim of Jeremy Ortiz (decedent), who died due to a November 9, 2014, work accident. Claimant's widow is Verna Ortiz Miller. Decedent and his wife Ms. Ortiz Miller were married at the time of his death. Their son Reece was 15 months old at that time. He is now 12 years old. Ms. Ortiz Miller agreed to settle the claim on behalf of her husband and to the benefit of herself and her wholly dependent child, Reece. The settlement was for \$300,000 paid at \$297 per week for Ms. Ortiz Miller and \$148.50 per week for Reece. Five thousand dollars was paid for funeral expenses and \$20,000 to Ms. Ortiz Miller. There was another child, Andrina, who was entitled to benefits under the settlement agreement. Andrina was decedent's child but not Ms. Ortiz Miller's. This motion for penalties does not include Andrina.

An addendum was also added to the worksheet for settlement and stated:

The parties agree from the date of death until August 1, 2015, 38 weeks of benefits have accrued, Surviving spouse has been paid a lump sum payment \$20,000.00, Each dependent child is entitled to \$10,000.00 in a lump sum, as part of the Initial payment.

For the 38 weeks of benefits which have accrued, surviving spouse is entitled to \$11,286:00, Each dependent child is entitled to \$5,643.00. Death benefits shall continued to be paid in the above weekly amounts until the maximum amount is reached under K.S.A. 44-510b, contingent upon continued eligibility of each dependent as outlined in that statute, The parties agree and stipulate claimant's death arose out of and in the course of his employment. The parties agree and stipulate the only dependents as defined by the Kansas Workers Compensation Act are the claimants identified herein. The parties: agree and stipulate the administrative law judge has the power and authority to apportion and reapportion compensation in the event a dependent loses their eligibility for the payment of benefits. Under no circumstances shall this settlement result in the payment of benefits in an amount exceeding \$300,000.00 pursuant to K.S.A. 44-510b. The parties further agree and stipulate nothing in this settlement agreement shall prohibit the parties from voluntarily reaching an agreement on a structured settlement or lump sum payment of death benefits to commute the settlement amount as specifically allowed by K.S.A. 44-531(b). The parties agree and stipulate all dependent children must submit an annual statement to the insurance carrier relating to continued eligibility for compensation under the Workers Compensation Act. Such statements shall be submitted on or before August 1, 2016, and each year thereafter. If an annual settlement is not submitted, then benefits may be terminated within 30 days, and shall be suspended until the annual statement is

submitted in proper form to the insurance carrier.¹

Respondent stopped paying benefits to Reece after March 30, 2025. Respondent conceded no payments were made after March 30, 2025. According to Respondent their obligation under the settlement ended when \$300,000 was paid out. On May 13, 2025, Claimant served a 20 day demand on Respondent to pay benefits owed to Reece, the wholly dependent child. The 20 day time limit to pay benefits was June 4, 2025. No benefit payments were made as of June 4, 2025. Motion for penalties was filed on June 27, 2025.

A Motion hearing for penalties was held on September 3, 2025, to determine if Respondent should pay penalties for failing to pay benefits after March 30, 2025, death benefits payable to the wholly dependent child, Reece.

Respondent argued the settlement agreement overrides the statute, and therefore payments are concluded because payments to Ms. Ortiz Miller and Reece have reached the \$300,000 monetary limit.

A letter dated September 11, 2018, was sent to Ms. Ortiz Miller from a senior technical specialist on AIG letterhead. The letter states in part:

I have been assigned to the claim for handling which is for ongoing death benefits. The payments are being issued to you direct in the amount of \$445.50. The benefits is capped at \$300K but can exceed if the dependent child remains under 18. The youngest (Reece Owen Ortiz) is currently 5 years old and therefore would be an additional 13 years of benefits to be paid.²

Reece did not have a guardian ad litem or any representation separate from his mother during the settlement process. Ms. Ortiz Miller was appointed as her son's conservator in April 2015.

The ALJ found the July 1, 2015, settlement between the parties preserved to the surviving dependents all of the benefits to which they were entitled under K.S.A. 2013 Supp. 44-510b, and Respondent and AIG wrongly terminated benefits to Reece Ortiz as of March 30, 2025. The ALJ determined Claimant established entitlement to penalties for failure to pay Reece Ortiz's survivor's benefits from and after April 7, 2025. Penalties were assessed at \$100.00 per week from April 7, 2025 (the next payment due after the March 30, 2025, cessation of benefits) to and through the date of this Order and continuing until Reece Ortiz's survivor benefits have been brought current.

¹ Transcript of Motion Hearing (Sept. 3, 2025), Exhibit #1.

² *Id.*, Exhibit #2.

PRINCIPLES OF LAW AND ANALYSIS

Respondent appeals arguing the order for penalties should be reversed because K.S.A. 44-521 provides compensation may be settled by agreement, settlement awards are final orders under K.A.R. 51-3-1, and the time to appeal a final award has lapsed under K.S.A. 44-551(b)(1). Respondent contends the settlement agreement is an enforceable contract, as there is no authority stating the minor child must have their own and separate representation, Ms. Ortiz Miller testified this agreement was in the best interest of her child, and the language of the settlement agreement is clear in stating under no circumstances will benefits exceed \$300,000.

Ms. Ortiz Miller argues the order should be affirmed.

K.S.A. 44-510b(a)(3) sets out the circumstances a minor child is entitled to death benefits under a workers compensation claim due to death of the minor child's parent.

(3) Any wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 18 years of age. A wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 23 years of age during any period of time that one of the following conditions is met:

- (A) The wholly dependent child is not physically or mentally capable of earning wages in any type of substantial and gainful employment; or
- (B) the wholly dependent child is a student enrolled full-time in an accredited institution of higher education or vocational education.

K.S.A. 44-510b(h) states:

Notwithstanding any other provision in this section to the contrary, the maximum amount of compensation benefits payable under this section, including the initial payment in subsection (a) to any and all dependents by the employer shall not exceed a total amount of \$300,000 and when such total amount has been paid the liability of the employer for any further compensation under this section to dependents, other than minor children of the employee, shall cease except that the payment of compensation under this section to any minor child of the employee shall continue for the period of the child's minority at the weekly rate in effect when the employer's liability is otherwise terminated under this subsection and shall not be subject to termination under this subsection until such child becomes 18 years of age.

1. Respondent does not have the authority under the settlement to terminate death benefits to the wholly dependent child who is not yet 18 years old despite the \$300,000 cap being reached.

The primary issue is interpretation of a settlement agreement as it relates to the wholly dependent child. The ALJ did not modify or change the agreement, but interpreted it in a manner contrary to Respondent's interest.

The addendum to the worksheet for settlement states in part: "Death benefits shall continued to be paid in the above weekly amount until the maximum amount is reached under K.S.A. 44-510b, **contingent upon continued eligibility of each dependent as outlined in the statute.**" (emphasis added) The addendum to the settlement contains this language: "Under no circumstances shall this settlement result in the payment of benefits in an amount exceeding \$300,000 pursuant to K.S.A. 44-510b."

Respondent argues this language gives them the authority to terminate benefits to Reece when \$300,000 was paid out. However, there is the language limiting payments governed by K.S.A. 44-510b, the same statute which allows a wholly dependent child to receive benefits until at least the age of 18, despite the \$300,000 cap being reached.

This addendum to the settlement agreement is clear benefits shall be capped at \$300,000 unless there is a wholly dependent child who has continued eligibility under K.S.A. 44-510b. The contingency is the conditions of eligibility for wholly dependent child as set out in the statute. This is the settlement was agreed to by the parties. Therefore, under the settlement Respondent did not have the authority to terminate Reece's benefits because Reece remained eligible pursuant to KS.A. 44-510b.

Reece's benefits continue to accrue and become due and owing each week under the terms of the settlement, which is a judgment as long as Reece remains statutorily eligible.

2. Penalties shall be assessed against Respondent for terminating benefits to the wholly dependent child.

K.S.A. 44-512a(a) states:

In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due to the person, firm or corporation entitled thereto, the employee shall be entitled to a civil penalty, to be set by the administrative law judge and assessed against the employer or insurance carrier liable for such compensation in an amount of not more than \$100 per week for each week any disability compensation is past due and in an amount for each past due medical bill equal to the larger of either the sum of \$25 or the sum

equal to 10% of the amount which is past due on the medical bill, if: (1) Service of written demand for payment, setting forth with particularity the items of disability and medical compensation claimed to be unpaid and past due, has been made personally or by registered mail on the employer or insurance carrier liable for such compensation and its attorney of record; and (2) payment of such demand is thereafter refused or is not made within 20 days from the date of service of such demand.

Ms. Ortiz Miller served Respondent with a 20 day demand to pay benefits to the wholly dependant child as long as he remains eligible under K.S.A. 44-510b. Respondent has failed to pay benefits as of March 31, 2025. The 20 day deadline to pay benefits was June 4, 2025. No benefits were paid. Respondent conceded no payments were made after March 30, 2025.

The ALJ assessed penalties against Respondent in the amount of \$100 per week beginning April 7, 2025 (the next payment due after the March 30, 2025 cessation of benefits) and continuing until Reece's benefits have been made current.

The Board agrees with the penalties as assessed by the ALJ.

Ms. Ortiz Miller requested the ALJ order be modified to penalty assessments beginning March 31, 2025. However, the benefits did not become delinquent until the next payment of April 7, 2025, was not paid. Therefore there will be no modification of the order.

DECISION

WHEREFORE, it is the finding, decision and order of the Board the Order of ALJ Bruce E. Moore dated November 17, 2025, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January, 2026.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

D. Shane Bangerter, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
Hon. Bruce E. Moore, Administrative Law Judge