

## Vasquez, Oscar

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### BENEFICIARIES

#### Dependent (RCW 51.08.050)

Low-income family members who receive cash from a worker to be used for their medical expenses can be considered dependents of the workers for purposes of RCW 51.32.050(5). ...*In re Oscar Vasquez*, BIA Dec., 99 19523 (2001) [dissent]

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

1 **IN RE: OSCAR E. VASQUEZ, DEC'D** ) **DOCKET NO. 99 19523**  
2 )  
3 **CLAIM NO. P-706766** ) **DECISION AND ORDER**  
4

5 **APPEARANCES:**

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7 Beneficiaries-Petitioners, Elfego Estrada and Silvia Vasquez, by  
8 Calbom & Schwab, P.S.C., per  
9 G. Joe Schwab and David Lybbert

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11 Employer, Stemilt Management, Inc.,  
12 None

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14 Department of Labor and Industries, by  
15 The Office of the Attorney General, per  
16 David W. Coe, Assistant  
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19 The beneficiaries-petitioners, Elfego Estrada and Silvia Vasquez, filed an appeal with the  
20 Board of Industrial Insurance Appeals on September 13, 1999, from an order of the Department of  
21 Labor and Industries dated August 23, 1999. The order rejected the application for pension  
22 payments to Elfego Estrada and Silvia Vasquez for the reason that they failed to submit proof or  
23 documentation that they were actually and necessarily dependent in whole, or in part, for their  
24 support from the earnings of the worker at the time of his fatal accident. **REVERSED AND**  
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31 **REMANDED.**

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33 **DECISION**  
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35 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
36 and decision on a timely Petition for Review filed by the beneficiaries/petitioners to a Proposed  
37 Decision and Order issued on November 13, 2000, in which the order of the Department dated  
38 August 23, 1999, was affirmed.  
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1 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
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3 no prejudicial error was committed and the rulings are affirmed. We agree with our hearing judge  
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5 that the testimony of Erasmo Gamboa, Ph.D., is not necessary to decide the facts of this appeal.  
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7 Dr. Gamboa certainly has in-depth knowledge about Mexican citizens who come to the United  
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9 States to work and their typical, familial relationships. However, the question before us concerns  
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11 the specific facts of the relationship between the deceased and his parents. Expert evidence is not  
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13 necessary to assist us in that determination.

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15 From the terms of the August 23, 1999 Department order, it appears that the Department  
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17 has determined that Oscar Vasquez was a single, unmarried worker at the time of his death while in  
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19 the course of his employment on April 2, 1998. The order also describes Elfego Estrada and  
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21 Silvia Vasquez as the parents of the deceased. The question on appeal is whether the parents  
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23 should receive benefits as a result of the death of their son under the Washington State Industrial  
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25 Insurance Act.

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27 When a worker covered by the Industrial Insurance Act dies in the course of his  
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29 employment, death benefits may be owing to others under RCW 51.32.050. Subsection 5 of that  
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31 section states, in part,

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33 If the worker leaves no surviving spouse or child, but leaves a  
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35 dependent or dependents, a monthly payment shall be made to each  
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37 dependent equal to fifty percent of the average monthly support actually  
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39 received by such dependent from the worker during the twelve months  
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41 next preceding the occurrence of the injury, . . . The payment to any  
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43 dependent shall cease if and when, under the same circumstances, the  
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45 necessity creating the dependency would have ceased if the injury had  
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47 not happened.

42 Thus, if the parents of Oscar Vasquez were found dependent on him, then each would receive  
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44 50 percent of the average support each actually received from him from April 2, 1997 to April 2,  
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46 1998. The Act defines "dependent" at RCW 51.08.050 as follows,  
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1 [A]ny of the following named relatives of a worker whose death results  
2 from any injury and who leaves surviving no widow, widower, or child,  
3 viz: Father, mother, grandfather, grandmother, stepfather, stepmother,  
4 grandson, granddaughter, brother, sister, half-sister, half-brother, niece,  
5 nephew, who at the time of the accident are actually and necessarily  
6 dependent in whole or in part for their support upon the earnings of the  
7 worker.  
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9 There is little precedent to assist us in applying this statutory language to the facts of this appeal.

10 Our Supreme Court has addressed similar facts in *McIntire v. Department of Labor & Indus.*,  
11 125 Wash. 370 (1923). In that case, the parents of a deceased, 24-year-old son sought to be  
12 found dependents of him at the time of his death. The son worked in a logging camp near his  
13 parents farm, and he turned over nearly all his earnings to his parents for the support of his family.  
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15 The deceased worker and his brother did much of the farm work, and their father was in poor  
16 physical condition. The court commented that the family could have supported life without the son's  
17 contribution, "but it is pretty clearly certain that the contributions from the son through his work were  
18 looked to, depended and relied on in substantial part by the family for means of reasonable  
19 support." *McIntire*, at 372. The court further described a test for dependency with reference to  
20 similar holdings in other jurisdictions; "Manifestly, with the knowledge and consent of the son, the  
21 respondents had depended and relied to a substantial extent upon that support for the ordinary  
22 necessities of life for persons in their station socially and financially." *McIntire*, at 372-373. With  
23 this background, we turn to the essential facts of this appeal.  
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36 At the time of his drowning, Oscar Vasquez was 17 years old. Prior to traveling to Mattawa,  
37 Washington to work picking apples in September 1997, Oscar Vasquez had resided with his  
38 parents, and three siblings in rural Mexico. He and his twin brother were the eldest children.  
39 Elfego Estrada explained that in 1997 there was a drought where they lived in Mexico, and there  
40 was no corn or work. Elfego Estrada was apparently already in Washington when Oscar Vasquez  
41 decided to go to the United States for work. When Oscar Vasquez came to Mattawa, he resided  
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1 with his father, his uncle, Rufino Estrada, and two others in a rented trailer. Elfego Estrada testified  
2 that prior to his return to his family in October 1997, he and his son, Oscar Vasquez, sent \$150  
3 each to their family in Mexico. During that same period, Oscar Vasquez purchased a typewriter to  
4 assist his brother in his studies, which his father took to Mexico. After Elfego Estrada returned to  
5 Mexico, Oscar Vasquez sent money to his family three times. The first remittance was \$300,  
6 apparently sent by wire, and the second and third were by cash carried by individuals returning to  
7 Mexico in the amounts of \$200 and \$300. Rufino Estrada stated that he had assisted his nephew  
8 to send money home by wire on two occasions. From this testimony, it appears that Oscar  
9 Vasquez sent his family in Mexico \$950 from his work at Mattawa from September 1997 until his  
10 death in April 1998. Additionally, prior to coming to Mattawa, Oscar Vasquez assisted his family on  
11 their small farm by assisting with raising corn, raising goats, and collecting firewood.  
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23 Elfego Estrada stated that he and his wife depended on the money sent to them by their  
24 son. He also testified that after the death of Oscar Vasquez he had money for food and clothing for  
25 his wife and children, but that he did not have money for his wife's health problems. It also appears  
26 that the money that was sent by Oscar Vasquez was used by his parents to send their other  
27 children to school. Elfego Estrada further explained that he usually earns about \$1,000 per month  
28 in the United States and that he sends about one-half home to his wife and children.  
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35 From this record, it seems that Oscar Vasquez was not emancipated from his family and  
36 was a contributing member of the family at the time of his death at age 17. His father attempted to  
37 support his family in Mexico while he worked in the United States with monthly cash contributions of  
38 about \$500. During the eight months he resided in Mattawa, Oscar Vasquez sent about \$950 and  
39 a typewriter to his family. This is not an insignificant sum, relative to the family's apparent limited  
40 cash income and standard of living. Elfego Estrada candidly testified that after his son's death he  
41 was able to provide food and clothing, but not money to cure his wife's health problems. Under  
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1 these facts, it is not difficult for us to conclude that his parents depended and relied upon their son's  
2 contributions, in part, for the ordinary necessities of their life in rural Mexico. Our Supreme Court  
3 has recently held that health insurance premiums are of such a critical nature as to require their  
4 inclusion in the calculation of the wage and time loss compensation rates for injured workers.  
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6 *Cockle v. Department of Labor & Indus.*, 142 Wn.2d 801 (2001). Surely, the cash that a poor  
7 Mexican family receives to allow access to medical treatment is of the same vital nature. The  
8 parents of Oscar Vasquez depended, in part, on his financial support in the months immediately  
9 prior to his death. The financial remittances that their son sent them cannot be characterized as  
10 mere gifts since the money was used for the ordinary necessities of their basic lifestyle. As a result,  
11 we distinguish this situation from that of *In re Owen Raines, Dec'd*, BIIA Dec., 08,542 (1957). In  
12 that case, the Board did not find a mother of a deceased 23-year-old to have been dependent on  
13 him. He had only contributed about \$130 during a six-month period before his death, and before  
14 that had exchanged money for what appeared to be room, board and laundry.

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16 In conclusion, Elfego Estrada and Silvia Vasquez have proven that they were partially  
17 dependent on their son, Oscar Vasquez, at the time of his death. He died unmarried and without  
18 children. As a result, Elfego Estrada and Silvia Vasquez qualify for dependent benefits under  
19 RCW 51.32.050(5). The Department must determine the average monthly support they received  
20 for the twelve months preceding the death of Oscar Vasquez on April 2, 1998. In that regard, we  
21 note that the un rebutted evidence in this appeal is that he sent his parents \$950 in United States  
22 dollars during that twelve-month period.

#### 23 **FINDINGS OF FACT**

- 24 1. On April 8, 1998, Elfego Estrada and Silvia Vasquez filed an application  
25 for benefits due to the death of their son, Oscar E. Vasquez.  
26 Oscar Vasquez' death occurred on April 2, 1998, during the course of  
27 his employment with Stemilt Management, Inc. The Department  
28 allowed the claim for burial benefits on April 14, 1998. On August 23,  
29 1999, the Department rejected the claim for pension benefits by

1 Elfego Estrada and Silvia Vasquez. The order stated that the parents  
2 had failed to submit proof or documentation that they were actually and  
3 necessarily dependent, in whole or in part, for their support on the  
4 earnings of the worker at the time of his fatal accident. Elfego Estrada  
5 and Silvia Vasquez filed a Notice of Appeal with the Board of Industrial  
6 Insurance Appeals on September 13, 1999. The Board granted the  
7 appeal on October 12, 1999, and assigned Docket No. 99 19523.  
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- 9 2. Oscar Vasquez was the son of Elfego Estrada and Silvia Vasquez. The  
10 family permanently resided in the state of Santa Cruz in Mexico. On  
11 April 2, 1998, Oscar Vasquez died in an industrial accident in the state  
12 of Washington while in the course of his employment as a farmworker  
13 with Stemilt Management, Inc. He was 17 years old at the time of his  
14 death, and he did not leave a surviving spouse or child.  
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- 16 3. At the time of his death on April 2, 1998, Oscar Vasquez had been  
17 temporarily residing in Mattawa, Washington since September 1997.  
18 From April 2, 1997 to April 2, 1998, Oscar Vasquez provided his mother  
19 and father the total sum of \$950 in United States dollars for their  
20 support.  
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- 22 4. During the period of September 1997 to April 2, 1998, Elfego Estrada  
23 and Silvia Vasquez had financial difficulty providing for all the  
24 necessities of life due to a drought that affected their ability to raise corn  
25 and goats, and limited job opportunities in Santa Cruz, Mexico. Elfego  
26 Estrada and Silvia Vasquez depended, in part, upon the \$950 that was  
27 provided to them by Oscar Vasquez for the necessities of life such as  
28 health care, food and clothing during the period of September 1997 to  
29 April 2, 1998.  
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### 31 **CONCLUSIONS OF LAW**

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- 33 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
34 parties and subject matter of this appeal.  
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- 36 2. At the time of the death of their son, Oscar Vasquez, in an industrial  
37 accident on April 2, 1998, Elfego Estrada and Silvia Vasquez were  
38 dependent, in part, upon his earnings within the meaning of  
39 RCW 51.08.050.  
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- 41 3. At the time of the death of their son, Oscar Vasquez, in an industrial  
42 accident on April 2, 1998, Elfego Estrada and Silvia Vasquez were  
43 eligible for death benefits under RCW 51.32.050(5).  
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- 45 4. The order of the Department of Labor and Industries dated August 23,  
46 1999, is incorrect and is reversed. This claim is remanded to the  
47 Department to issue an order allowing the claim made for benefits by

1 Elfego Estrada and Silvia Vasquez due to the death of their son, Oscar  
2 Vasquez, and setting the amount and duration of those benefits under  
3 RCW 51.32.050(5).  
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5 It is **ORDERED**.

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7 Dated this 14th day of March, 2001.  
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9 BOARD OF INDUSTRIAL INSURANCE APPEALS

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13 /s/ \_\_\_\_\_  
14 THOMAS E. EGAN Chairperson

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18 /s/ \_\_\_\_\_  
19 FRANK E. FENNERTY, JR. Member

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22 **DISSENT**

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24 I disagree with the majority's decision that the parents of Oscar Vasquez proved their  
25 dependence upon the earnings of their son at the time of his unfortunate, accidental death. The  
26 Industrial Insurance Act is a statutory scheme of compensation for the injury and death of workers,  
27 and the Board must follow the laws as written when deciding individual appeals. The Washington  
28 Legislature has not created an automatic right to support benefits for relatives of a worker killed in  
29 the course of his or her employment, other than for a spouse or child. Under RCW 51.08.050,  
30 parents and other named relatives seeking support benefits have the burden of proving that at the  
31 time of the accident, they were actually and necessarily dependent, for their support, upon the  
32 earnings of the deceased worker.  
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42 The majority goes too far in its interpretation of the self-serving evidence of the  
43 petitioners. The petitioners did not submit documentary evidence of the fund transfers that should  
44 have been available such as electronic wire records, payroll records of the deceased, or financial  
45 records in Mexico. Furthermore, the only relevant evidence of the dependency of the petitioners  
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1 comes from Elfego Estrada. As the hearings judge pointed out in his proposed decision,  
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3 Mr. Estrada did not even know that his son had decided to go to the United States to work in 1997.  
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5 It is hard to conclude that he would have relied upon his son's earnings for his support and that of  
6  
7 his wife when he was not aware that funds would be sent. As we noted in an earlier decision,  
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9 "courts have generally held that occasional gifts or contributions not relied on for support do not  
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11 establish dependency." *In re Owen Raines, Dec'd*, BIIA Dec., 08,542 (1957), at 6 (citations  
12  
13 omitted). Significantly, Mr. Estrada admitted that even without the money that his son may have  
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15 continued to send to the family, he had the financial ability to provide food and clothing. The  
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17 majority reads too much into his statements that he did not have money to cure his wife of some  
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19 type of physical problem. There was no evidence from Silvia Vasquez concerning her health,  
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21 dependence upon the earnings of Oscar Vasquez, or even the receipt of money from him.

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23 I sympathize with Elfego Estrada and Silvia Vasquez in the loss of their son. However, the  
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25 law enacted by the Washington Legislature must be applied objectively. I would affirm the  
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27 Department's decision in this matter and deny the petitioners' claim for dependency benefits.

28  
29 Dated this 14th day of March, 2001.

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31 BOARD OF INDUSTRIAL INSURANCE APPEALS

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35 /s/ \_\_\_\_\_  
36 JUDITH E. SCHURKE Member  
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