

**Case:** *Deborah Harris, domestic partner of Kerry Fadely, deceased vs. Millennium Hotel and New Hampshire Insurance Company, Alaska Workers' Comp. App. Comm'n Dec. No. 183 (June 28, 2013)*

**Facts:** Kerry Fadely (Fadely) was fatally shot by a disgruntled employee while working as the food and beverage manager at the Millennium Hotel (Millennium) on October 29, 2011. Her domestic partner, Deborah Harris (Harris), sought workers' compensation death benefits. Harris and Fadely had been together for more than 10 years in a committed and financially interdependent relationship. Millennium controverted benefits. The parties stipulated to the facts, but disagreed on how the law applied to those facts. The board denied Harris' claim, concluding that the Act did not provide benefits to surviving domestic partners. The board declined to consider Harris' constitutional arguments, concluding it lacked jurisdiction. Harris appeals.

**Applicable law:** AS 23.30.215(a) provides that death benefits are payable to the "widow or widower" and "children" of the deceased employee. AS 23.30.395(40) defines "widow" as the decedent's wife; AS 23.30.395(41) defines "widower" as the decedent's husband.

AS 25.05.013(b) states: "A same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage."

In *Ranney v. Whitewater Engineering*, 122 P.3d 214 (Alaska 2005), the Alaska Supreme Court denied death benefits to a surviving unmarried cohabitant of the deceased employee.

Administrative agencies do not have jurisdiction to decide constitutional questions. *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007).

**Issue:** Is Harris, as a same-sex domestic partner, entitled to death benefits?

**Holding/analysis:** Harris is not entitled to death benefits. "Based on the foregoing law, Harris cannot be considered married to Fadely, nor is she the widow or widower of Fadely." Dec. No. 183 at 5.

The commission, like the board, did not have jurisdiction to consider Harris' constitutional arguments, and thus, it declined to do so.

**Note:** This decision is on appeal to the Alaska Supreme Court.