

APPEAL NO. 93908

A hearing in the nature of a contested case hearing was held in (city), Texas, on September 1, 1993, (hearing officer) presiding as hearing officer. The hearing was held for the purpose of resolving the matter of whether the appellant (hereinafter referred to as claimant for purposes of this decision) could establish good cause for not timely filing her claim for workers' compensation benefits as a surviving dependent of JG, deceased. Although all parties were notified of the proceedings, the claimant was the only one to appear. The hearing officer determined that the claimant did not have good cause for failing to timely file her claim for benefits and was not entitled to any benefits under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*). Claimant appeals urging that she has shown she acted with ordinary prudence in filing her claim "despite that it was over the one year limit." A response from the carrier urges that the evidence is sufficient and compelling and asks that the decision of the hearing officer be affirmed.

DECISION

Finding there is sufficient evidence to support the hearing officer's determination that the claimant did not provide good cause for her failure to timely file a claim for death benefits as a beneficiary of the deceased, we affirm the decision.

The proceedings in this case were unusual and the background is not entirely clear. However, we believe there is a sufficient procedural and legal basis to uphold the proceedings although it might better have been handled with a single contested case hearing that included all potential and rival beneficiaries. Of importance is that no party to this proceeding has lodged any objection to the regularity of the proceedings or raised any issue regarding the proceedings on appeal.

From the proceedings held and from the decision of the hearing officer, it is apparent that the deceased expired on (date of injury), from a compensable injury thereby entitling his legal beneficiaries to death benefits under the 1989 Act. The claimant in this proceeding is apparently claiming benefits as the common law wife of the deceased although such status has not been adjudicated in any proceedings to our knowledge. It is also indicated in the record that one of the other claimants is asserting common law status as a surviving spouse and that there are two surviving children of the deceased. In any event, the dispute resolution process involving the other claimants had reached the point of a hearing scheduled for August 2, 1993, when it somehow came to the attention of the hearing officer that the instant claimant was a potential beneficiary although no claim for benefits had been filed. (The claimant claimed to be the spouse of the deceased in a third party lawsuit). In any event, the hearing officer continued that hearing, corresponded with the claimant advising her of the provisions of the 1989 Act regarding the one year time period for beneficiaries to file a claim, and setting a hearing for August 31, 1993, to give the claimant an opportunity to show good cause for failure to timely file a claim for benefits. By the time of the hearing, which was held on September 1, 1993, the claimant had filed a claim. As indicated, the parties to the earlier scheduled contested case hearing were notified and

given an opportunity to appear at the September 1, 1993, hearing although none took advantage of this opportunity. It is apparent that another hearing involving those parties is scheduled for the future. Since the claimant asserted her status as a beneficiary (Section 409.007(c) and filed a claim, the hearing officer had authority to conduct a contested case hearing to resolve the issue of good cause for failure to timely file a claim. Section 409.007(b)(2). Although a benefit review conference is normally required prior to a contested case hearing (Section 410.024), under the circumstances of this case, proceeding directly to a contested case hearing is permitted under the provisions of the Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.5(b) (Rule 142.5), which provides in pertinent part:

Parties may proceed to a contested case hearing without attending a benefit review conference if the commission determines that:

(1) mediation would not prove effective to resolve the dispute;

* * * * *

(3) the situation of the parties or the nature of the facts or law of the case is such that the overall policy of the Act would be advanced by proceeding directly to a contested case hearing.

We believe either of these reasons could be reasonably applied to the situation at hand.

Regarding the substantive issue of good cause, the claimant testified that although represented by a law firm that she retained in February 1992 in a law suit involving the deceased's death, she was not aware she might be able to file for workers' compensation benefits. She stated she was educated in (M) and did not speak or understand English. She filed a claim after receiving the letter from the hearing officer. The claimant's counsel argues that he was not aware that the employer subscribed to workers' compensation, and that he never practiced workers' compensation law and did not have any knowledge of benefits which could inure to his client. He also acknowledged that he had never attempted to contact the Commission prior to the claimant's receipt of the hearing officer's letter and that he did not know the Commission maintained a list of Texas employers and workers' compensation insurance coverage. There was also evidence in the form of a letter from an investigator with the law firm to the employer dated March 11, 1992, which requested certain personnel records on the deceased and which stated:

Please be advised that this officer represents (claimant), the wife of (deceased), in a civil action. (Claimant) has authorized us to obtain any personnel records you have in your possession.

Claimant's counsel indicated that there was no record in his file of any reply to this letter.

Based upon this state of the evidence, the hearing officer concluded that good cause had not been shown for the claimant's failure to timely file a claim for benefits. The hearing officer applied the correct standard, that is, the standard of conduct of an ordinary, prudent

person. Texas General Indemnity Co. v. Goodwin, 689 S.W.2d 469 (Tex. App.-Houston [14th Dist] 1985, no writ). Goodwin states that the text laid down by the Texas Supreme Court in Texas State Highway Department v. Fillmon, 236 S.W.2d 635, 637 (Tex. Civ. App.-Eastland 1951), aff'd 242 S.W.2d 172 (Tex. 1951) is as follows:

The test of a showing of good cause for delay in filing a claim beyond the statutory period is the standard of conduct of an ordinary prudent person. The question is one of fact to be determined by the trial court or jury whose decision will not be disturbed unless the evidence is such that reasonable minds could reach no other conclusion (other than an opposite result).

The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a). As we have held, we do not substitute our judgement for that of the hearing officer as fact finder where there is sufficient evidence of record to support a finding. Texas Workers' Compensation Commission Appeal No. 93861, decided November 15, 1993; Texas Workers' Compensation Commission Appeal No. 93858, decided November 9, 1993. That the claimant was ignorant of the Workers' Compensation law and its requirements is not a sufficient basis for good cause for her untimely filing. Lee v. Houston Fire and Casualty Insurance Co., 530 S.W.2d 294 (Tex. 1975); Allstate Insurance Company v. King, 444 S.W.2d 602 (Tex. 1969); Texas Workers' Compensation Commission Appeal No. 93783, decided October 19, 1993. In a like vein, the claimant's limited knowledge of the English language and possible limited formal education does not establish good cause. Petroleum Casualty Company v. Canales, 499 S.W.2d 734 (Tex. App.-Houston [1st Dist] 1973, writ ref'd n.r.e.). Also, that the claimant retained a lawyer for a civil action who was not knowledgeable about worker's compensation law and did not timely file a claim is not good cause for the claimant failure to timely file. See Texas Employers Insurance Association v. Tobias, 614 S.W.2d 901 (Tex. App.-Eastland 1981, writ dism'd).

In sum, there is sufficient evidence to support the hearing officer's determination that the claimant has not shown good cause for failing to timely file her claim in accordance with the requirement of Section 409.007. We find no basis in law or fact to disturb her determination. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge