

APPEAL NO. 960176

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 28, 1995, a contested case hearing (CCH) was held. In response to the sole issue before him, the hearing officer determined that the deceased's uncle, ____ (referred to herein as claimant), was not a legal beneficiary of the deceased and that no legal beneficiaries have filed a claim for death benefits in the year since the deceased's death.

Claimant appeals the hearing officer's decision asserting that he had cared and provided for the deceased since the deceased was 14 years old, that the claimant acted as a parent of the deceased and, therefore, was the "legal parent" of the deceased and is entitled to death benefits. Inferentially, claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent, carrier, suggests that claimant's appeal is untimely or, in the alternative, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision and order of the hearing officer are affirmed.

Addressing the timeliness issue, the decision of the hearing officer was forwarded to the parties by cover letter dated January 5, 1996, and distributed on January 9, 1996. Claimant does not state in his appeal when he received the decision, so we will apply the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)), which provides a deemed receipt date to be five days after the date the decision was mailed (i.e., January 14, 1996). Section 410.202 provides that the appeal must be filed not later than the 15th day after the decision is received. The statutory date by which the appeal must have been filed is therefore January 29, 1996. Claimant's appeal is dated January 20, 1996, the certification of service is dated January 20, 1996, the envelope bears a postmark of January 22, 1996, and the appeal was received on January 29, 1996, and is hence timely.

It is undisputed, and in part stipulated, that the deceased, at the time of his death on ____, was employed as a "swamper" by the employer. The deceased was electrocuted when a pole he was holding in the back of a truck came in contact with overhead electrical lines. Claimant is an uncle of the deceased (claimant's sister was the deceased's mother) and contends that he is the "legal parent" of the deceased because he performed many of the duties and responsibilities of a parent, at least after the deceased was 14 years old.

The evidence and discussion at the CCH established that the deceased was not

married, had never been married, had no children, natural or adopted, that the deceased's parents were dead and that the deceased had no siblings. Although the deceased apparently does have a surviving grandmother, the grandmother has made no claim for death benefits because she is unable to establish any dependency on the deceased.

The life history, briefly, of the deceased is that after the death of his parents, and being shuttling among relatives, he came to live with the claimant when he was 14 years old (claimant was only 20 years old at that time). Claimant provided the deceased with necessities and the deceased attended public school until he dropped out his senior year at age 18. After dropping out of school, claimant started working and there is some testimony that deceased and claimant shared expenses. Deceased then moved to south Texas to live with another uncle, was apparently convicted of a crime or crimes and was incarcerated for a period of four and one-half years or so. Deceased was released on probation in 1994 and was allowed to live with claimant, provided he check in with his probation officer daily. Deceased went to live with claimant in August or September 1994 and, a few weeks later, obtained employment with the employer and that employment lead to his fatal electrocution on ____.

Claimant testified as to the contributions the deceased made to claimant's household, but the hearing officer commented that it appeared that the deceased was merely sharing expenses of rent, food and utilities. Claimant submitted an affidavit from his mother-in-law which stated that the deceased paid claimant \$200.00 a month in rent (testimony established that deceased paid about half the rent), \$150.00 a month in groceries (testimony again established this was for groceries the deceased consumed), provided weekly lawn care which the affiant believed was "at a cost of \$100.00 a month" (there was no evidence of the fair market value of the lawn care) and that deceased maintained two vehicles (one was apparently his own) including mechanical upkeep, wash and detail "at a cost of \$70.00 per month" (there was no evidence how this figure was calculated and how much was for the deceased's own vehicle).

Claimant contends that because he acted as a parent for a period of time prior to the deceased's death, that he should be considered as an eligible beneficiary. He further argues that he was dependent upon the deceased in that he relied upon a portion of the deceased's monthly rental payment to make his own house payment.

Section 408.182 sets out those who are eligible for death benefits under the 1989 Act. Sections 408.182(a), (b) and (c) deal with eligible children, grandchildren and the spouse. Section 408.182(d) provides:

- (d) If there is no eligible spouse, no eligible child, and no eligible grandchildren, the death benefits shall be paid in equal shares to surviving dependents of the deceased employee who are parents,

stepparents, siblings, or grandparents of the deceased.

Although there may be a surviving grandparent, that individual apparently concedes that she was not dependent on the deceased. The statute does not list uncle, nor does it provide for someone else not in the specified classes who has provided care for the deceased sometime in the past. Section 408.182(d) is implemented in Rule 132.6. Rule 132.6(b) lists the evidence needed to prove relationship to the deceased and includes birth certificates, decrees of adoption, baptismal records, court orders, admissions of paternity and other such information. Sibling is defined in Rule 132.6(c) as "a brother or sister who shares at least one parent, through birth or adoption, with the deceased employee."

Neither parent nor stepparent are defined in either the Act or Texas Workers' Compensation Commission (Commission) rules. Although BLACK'S LAW DICTIONARY, 1114 (6th ed. 1990), states a parent may refer to a "person or persons who share mutual love and affection with a child and who supply child support and maintenance, instruction, discipline and guidance," it goes on to state that by statute parent is defined to include (1) either the natural father or mother born in a valid marriage, (2) either an adoptive father or mother, (3) the natural mother of an illegitimate child, (4) a child's putative blood parent who has expressly acknowledged paternity, (5) any individual or agency whose status as a guardian has been established by judicial decree and "any person entitled to take . . . if the child died without a will." Claimant does not fit into any of those categories. Finding sufficient evidence to support the hearing officer's determination that claimant is not a legal beneficiary under the Texas Workers' Compensation Act, we affirm the hearing officer's decision.

Although our affirmance of the hearing officer's decision on the above basis is dispositive of the case, we do note that a considerable portion of the CCH dealt with whether claimant was dependent on the deceased, a necessary requirement had claimant been a parent, which, as discussed above, he was not. The hearing officer also discussed whether claimant was dependent on the deceased. Claimant, in his appeal and in testimony at the CCH, argued that he had "accepted legal responsibilities for [deceased] like a parent would" when deceased was released from prison. This sounds as if the deceased was dependent on claimant rather than the other way around. Further, as noted earlier, the hearing officer commented that the testimony and evidence appeared to be that the deceased was merely paying his share of the expenses rather than contributing to the economic benefit of claimant and his family. While not necessary to the disposition of this case, we comment on the matter as it was litigated and discussed in the hearing officer's decision.

Upon review of the record submitted, we find no reversible error, and we will not disturb the hearing officer's factual determinations unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate,

150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge