

APPEAL NO. 980224

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 5, 1998, with hearing officer. With respect to the sole disputed issue before her, the hearing officer determined that at the time of his death (decedent) "provided more than 20% of [HW and JW] net resources, and significantly contributed to their livelihood and welfare;" therefore, she determined that they are eligible beneficiaries for death benefits under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 132.4(d) and 132.2 (Rules 132.4(d) and 132.2). (Ms. LM), as guardian of (KM), decedent's minor child, has filed an appeal, essentially arguing that the hearing officer's determinations that HW and JW are dependent stepchildren within the meaning of the 1989 Act and that they are eligible for death benefits are against the great weight and preponderance of the evidence. The appeals file does not contain a response from either (Ms. JM), the guardian of HW and JW, or from the carrier.

DECISION

Affirmed.

The parties stipulated that the decedent died as a result of injuries he sustained in the course and scope of his employment on \_\_\_\_\_, and that Ms. JM, decedent's \_\_\_\_\_, and KM, decedent's \_\_\_\_\_, were eligible for death benefits. The only disputed issue was whether HW and JW, decedent's stepchildren, were eligible beneficiaries. Ms. JM testified that she was married to the decedent at the time of his death and that KM, HW and JW also lived in the household. She stated that she was divorced from (Mr. CW), HW and JW's \_\_\_\_\_, on December 28, 1992. Mr. CW was ordered to pay child support under the terms of the divorce decree. He continued to pay child support in the amount of \$184.60 once every two weeks in accordance with an order withholding those payments from his earnings, until July 25, 1997. At that time, Mr. CW left his job and did not make another child support payment until September 10, 1997, when he made a partial payment in the amount of \$92.32.

Ms. JM testified that, at the time of his death, she and the decedent had a joint checking account and that both of their incomes were directly deposited into that account. She stated that all of the household expenses were paid out of that account, which included the necessary expenses for all three of the children living in the household. She stated that her income was \$612.50 every two weeks. She also stated that she received \$184.60 in child support every two weeks from Mr. CW, until July 25, 1997, when the payments largely ceased and that Mr. CW also paid \$153.90 in premiums for health insurance coverage for a three-month period for himself, HW and JW. If that money is reduced to its weekly value, the weekly contribution to the joint account from Ms. JM and Mr. CW was \$407.02. The parties stipulated that the decedent's average weekly wage is \$756.52. The total weekly

earnings for the household were \$1163.54, 65% of which was contributed by the decedent.

The hearing officer determined that HW and JW were eligible beneficiaries under Rule 132.4(d). Rule 132.4(d) provides as follows:

A person claiming benefits as the dependent stepchild of the deceased employee shall prove that the employee was married to a parent of the claimant, and must also establish dependent status as set out in §132.2 of this title (relating to Determination of Facts of Dependent Status).

Under Rule 132.2(c) an economic benefit with a value equal to or greater than 20% of the persons's net resources "is an economic benefit which contributed substantially to the person's welfare and livelihood." In this instance, the evidence established that the decedent contributed 65% of the total weekly household earnings, from which the necessary expenses for HW and JW were paid. The hearing officer determined that because the decedent provided well in excess of 20% of the net resources for both HW and JW, he contributed significantly to their welfare and thus, HW and JW are eligible beneficiaries under Rule 132.2 and 132.4(d). The evidence outlined above provides sufficient evidentiary support for the hearing officer's determinations and our review of the record does not demonstrate that those determinations are so against the great weight and preponderance of the evidence as to clearly wrong or manifestly unjust. Accordingly, no basis exists for reversing the hearing officer's decision on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Given our affirmance of the determination that HW and JW are eligible beneficiaries, we likewise affirm the hearing officer's determination that Ms. JM, decedent's widow, is entitled to one-half of the weekly death benefits and that KM, HW and JW are entitled to one-sixth (one-third of one-half) of the weekly death benefits until their entitlement to such benefits ends under Rule 132.8.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney  
Appeals Judge

CONCUR:

Alan C. Ernst  
Appeals Judge

Christopher L. Rhodes  
Appeals Judge