

## APPEAL NO. 981055

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 1, 1998, with the record closing on April 22, 1998. (Hearing officer) presided as hearing officer. She determined the amount of death benefits owed the two stepchildren of the deceased after a third party settlement of a wrongful death action was reached with the deceased's wife and three natural children. The wife appeals this determination on behalf of the stepchildren, contending error as a matter of law in the interpretation of applicable provisions of the 1989 Act. The respondent's (carrier) reply was untimely and for this reason will not be considered. See Section 410.202. However, the position statements of the parties which were introduced into evidence at the CCH will be considered in our decision.

### DECISION

Affirmed.

The facts of this case were stipulated by the parties. The deceased sustained a compensable injury on \_\_\_\_\_, as a result of which he died. At the time of death, he had a wife; two children born of the marriage; a child born of this marriage five months after his death; and two stepchildren, born to his wife before her marriage to the deceased and dependent on him. Death benefits were fixed at the rate of \$472.00 per week and were paid half to the wife and half to the five children.

As of October 3, 1997, \$59,944.00 in death benefits had been paid. On this date, the wife and three children of the marriage, as plaintiffs, reached a settlement in a wrongful death action against a third party, which awarded the plaintiffs \$3.95 million. Carrier asserted a lien on the judgement in the amount of \$50,044.95, the benefits it had already paid to the wife and natural children, but not to the stepchildren. It received this amount pursuant to a Rule 11 of the Texas Rules of Civil Procedure agreement with the wife and three children. In pertinent part, the Rule 11 agreement provided that the settlement would be considered an advance for purposes of the workers' compensation claim under Section 417.002(b) and that the advance was "of such size that [carrier] will not be obligated to pay anymore benefits" to the wife and three children borne of the marriage.

The two stepchildren were not parties to the third party liability lawsuit, judgement, or Rule 11 agreement with the carrier. For this reason, the carrier continued to pay benefits to these individuals in the original amount, which was one-fifth of 50% of \$472.00, or \$47.20 each per week. The stepchildren contend that they are entitled to share equally the full \$472.00 weekly benefits because, as a result of the Rule 11 agreement there are no longer any other eligible beneficiaries. In support of their position, they rely on Section 408.184(a), which provides:

- (a) If a legal beneficiary dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries. . . .

The hearing officer determined that the stepchildren were not entitled to the full amount of the death benefits, but only to the pro rata share established by Section 408.182 because the wife and three natural children were still eligible beneficiaries even though they received as an advance the full amount of the benefits to which they were likely due.

In their appeal, the stepchildren argue that it was "ridiculous" for the hearing officer to find that the wife and natural children were still "technically 'eligible' to receive Workers' Compensation benefits subsequent to the settlement of the third party case" simply because the carrier will not have to pay anymore benefits to the wife and natural children by virtue of the large amount of the settlement. In support of this position, the stepchildren rely on the case of Blankenship v. Highlands Insurance Company, 594 S.W.2d 147 (Tex. Civ. App.-Dallas, 1980, writ ref'd n.r.e.). In that case, the deceased injured worker was survived by a wife and minor children. The wife remarried, thus terminating her right to continued death benefits. The children contended that they were entitled to the full amount of the benefits as established on the date of death, arguing that they had a reversionary interest in the benefits previously paid to the surviving spouse. The court held that the workers' compensation law in effect at the time specified only who the beneficiaries were and did not limit the amount of benefits to be paid once this amount was fixed as of the date of the death. It held that the children did have a reversionary interest in the amount of death benefits originally paid to the surviving spouse.

We do not find Blankenship, *supra*, controlling in the case we now consider because in that case the beneficiary spouse expressly lost this status by operation of law. Section 408.182 of the 1989 Act defines eligibility for death benefits in terms of status, that is a child, a dependent, a grandchild or spouse. Once this status is lost, the beneficiary becomes ineligible for death benefits. Thus, Section 408.134(b) provides, as in the Blankenship case, that a spouse who remarries "ceases to be eligible" for benefits after the 104th week. A child is no longer eligible for benefits upon reaching majority (and not in school) or upon losing dependency status. The mere satisfaction of benefits through an advance such as in this case does not remove the eligible beneficiary status from the spouse and natural children, but simply and quite logically only relieves the carrier of paying again what the beneficiaries have already received. The continuing "technical" status of a beneficiary is also consistent with Section 417.002(c) which provides that if an advance is insufficient, the carrier is to then "resume the payment of benefits when the advance is exhausted." In our opinion, the hearing officer correctly interpreted the 1989 Act as providing that the spouse and natural children remain beneficiaries under the facts of this case and that the

stepchildren are not entitled to the wife's and natural children's shares of death benefits. Any other result, we believe, is not consistent with a fair reading of the 1989 Act and would effectively destroy the carrier's subrogation rights established in Section 417.001 *et seq.*

Finding no legal error, we affirm the decision and order of the hearing officer.

Alan C. Ernst  
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.  
Chief Appeals Judge

Robert W. Potts  
Appeals Judge