

APPEAL NO. 982874

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 November 3, 1998. Addressing the sole disputed issue of who were the beneficiaries of the decedent, she (the hearing officer) determined that there were no proper legal beneficiaries and awarded death benefits to the Subsequent Injury Fund. The appellants, both claiming to be the legal spouse of the decedent, have appealed this determination, contending that each alone is the legal spouse and asserting the factual and legal insufficiency of the decision to the contrary. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed in part and reversed and remanded in part.

Essential background facts were not in dispute. The decedent entered into a ceremonial marriage with GR on June 11, 1969. This marriage was never ended by divorce. Sometime in 1992, GR and the deceased informally separated when GR left the marriage home. She said she did this because the decedent was "having an affair" with another woman and that when GR confronted him about this they both agreed to a "temporary separation." The two never again lived together. Sometime toward the end of 1992, the claimant and JY began living together. At the time, JY was ceremonially married to a third party. This marriage did not end in divorce until a decree of divorce was issued on October 21, 1997. On _____, the deceased died as a result of a work-related injury.

Section 408.182 controls the distribution of death benefits. An "eligible spouse" is normally entitled to death benefits and is defined as:

the surviving spouse of a deceased employee unless the spouse abandoned the employee for longer than the year immediately preceding the death without good cause, as determined by the commission.

Section 408.182(f)(3). Tex. W.C. Comm=n, 28 TEX. ADMIN. CODE ' 132.3 (Rule 132.3) implements this statute and provides in part:

(b) A surviving spouse who abandoned the employee, without good cause for more than one year immediately preceding the death, shall be ineligible to receive death benefits. The surviving spouse shall be deemed to have abandoned the employee if the surviving spouse and the employee had not been living in the same household for more than one year preceding the employee's death

(c) If more than one person claims to be the surviving spouse of the deceased employee, the commission [Texas Workers' Compensation Commission] shall presume the most recent spouse is the surviving spouse. This presumption may be rebutted by an individual who presents proof of a prior valid marriage to the deceased employee.

JY contended that she was the common-law spouse of the decedent at the time of his death. She attempted to prove this by establishing that she and the decedent in various ways held themselves out to be husband and wife. She makes this argument even though she knew her prior ceremonial marriage had not been terminated by divorce until 10 days before the decedent died and she knew the claimant's ceremonial marriage had not been terminated by divorce as of the time of his death. The hearing officer's findings of fact in these regards have not been appealed by JY. The hearing officer therefore concluded that JY was not a beneficiary of the deceased. In her appeal, JY argues that this determination was error. We disagree. In Texas Workers' Compensation Commission Appeal No. 970453, decided April 28, 1997, we discussed the concept of a putative marriage and wrote:

A putative marriage is one which was entered into in good faith by at least one of the parties, but which is invalid by reason of an existing impediment on the part of one or both of the parties. Garduno v. Garduno, 760 S.W.2d 735 (Tex. App.-Corpus Christi 1988, no writ). A putative marriage may arise out of either a ceremonial or informal marriage. Rey v. Rey, 487 S.W.2d 245 (Tex. Civ. App.-El Paso, no writ). A putative marriage is based upon good faith and ignorance of the impediment. Esparza v. Esparza, 382 S.W.2d 162 (Tex. Civ. App.-Corpus Christi 1964, no writ). If the alleged putative spouse is aware that a prior marriage existed at one time or if a party to an alleged putative marriage receives reliable knowledge of an impediment to the marriage, that party cannot simply declare disbelief of information and continue as if it were untrue. Instead, that party has a duty to investigate further and not act blindly or without reasonable precaution. Garduno, *supra*.

In addition, Section 25.02 of the Penal Code creates the crime of bigamy if a person is legally married and lives with a person other than his spouse under the appearance of being married.

At the CCH, JY argued that only the 1989 Act should be looked to for determining the status of JY and that other sources such as, presumably, the Family Code and Penal Code should be ignored. We do not feel free to do this since the legislature has established state policy on such a fundamental concept as the existence of a marriage relationship. Because the deceased was formally married to GR at all times during the cohabitancy of the deceased and JY, and both deceased and JY knew this at all pertinent times, it was not legally possible for him to create a so-called common-law marriage with

JY. Similarly, we find more than sufficient evidentiary support for the conclusion that no putative marriage relationship existed between the deceased and JY because each knew the other was married and not yet divorced. For this reason, we affirm that part of the decision and order of the hearing officer which found that JY was not a legal beneficiary of the deceased.

GR appeals the determination of the hearing officer that she abandoned her marriage to the deceased when she left him in 1992. In support of her position, she testified that the deceased irregularly provided her monetary support; that the two never discussed divorce; that communication between the two was maintained; and that at least over the year preceding his death, the decedent and GR were "working on getting back together." No details were provided about the reconciliation being attempted. She also insisted that the separation was by mutual agreement without formalities. JY testified that the deceased was reluctant to file for a divorce while GR was seriously ill, but that he said that he was going to file sometime in 1997 and they would be formally married in 1998. In Texas Workers= Compensation Commission Appeal No. 980142, decided March 10, 1998, we observed that whether a spouse has abandoned a marriage was essentially a question of fact for the hearing officer to decide. In the case we now consider, the evidence obviously came from interested parties and was evaluated accordingly by the hearing officer. In her discussion of the evidence, it is clear that the hearing officer did not find GR credible and persuasive in her assertions that she and the decedent were working on a reconciliation. In accordance with this evaluation of the evidence, she found that there was an abandonment of the marriage as set out in Rule 132.3(b). Under our standard of review of factual determinations, we perceive no valid reason to reverse that determination. See Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

What concerns us, however, is that the hearing officer made no express or implied finding that the abandonment was without good cause. Section 408.182(f)(3) requires an affirmative finding of good cause or the lack thereof in resolving the legal consequences of an abandonment. For this reason, we affirm the finding of an abandonment of the marriage, but reverse the determination that GR was not a beneficiary and remand this issue for further findings of fact and conclusions of law that the abandonment was or was not in good faith, with an appropriate explanation of that finding.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission=s Division of Hearings, pursuant to Section 410.202. See Texas Workers= Compensation Commission Appeal No. 92642, decided January 20, 1993.

Alan C. Ernst
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Tommy W. Lueders
Appeals Judge