

APPEAL NO. 990277

Following a contested case hearing held on December 2, 1998, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellants/cross-respondents (claimants and/or the decedent's parents) are not the legal beneficiaries of (decedent) under the 1989 Act for death benefits since they were not financially dependent upon the decedent at the time of his death, and that the respondent/cross-appellant (self-insured) did not waive its right to contest the status of the claimant beneficiaries as legal beneficiaries of the decedent. Claimants have filed a request for review, asserting simply, without discussion, that the "[s]elf-Insured **did** waive its right to contest the status of [claimant beneficiaries] as representatives of the Decedent," and that the determination that they are not the legal beneficiaries of the decedent because they were not financially dependent upon him is error because the financial dependency for death benefits provision of the 1989 Act is unconstitutional.

The self-insured has filed a request for review, stating that it does not dispute the hearing officer's determination of the disputed issues but urges that the hearing officer's order that the self-insured pay death benefits into the Subsequent Injury Fund (SIF) in accordance with her decision, the 1989 Act, and the rules of the Texas Workers' Compensation Commission (Commission) is error because it violates Article III, Section 52(a), and Article VIII, Section 1-e, of the Texas Constitution.

The parties filed responses to the appeals.

DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, the decedent was an employee of the self-insured for workers' compensation purposes; that on \_\_\_\_\_, the decedent sustained a compensable fatal injury while in the course and scope of his employment with the self-insured; that the claimants are the decedent's parents; that at the time of the decedent's death, claimants were not financially dependent upon the decedent and did not receive 20% or more of their income from the decedent; and that the self-insured received written notice of the decedent's death on December 22, 1996, and it filed its controversion contesting claimants' beneficiary status on August 25, 1998.

The decedent's father testified that he was a retired municipal court judge; that the decedent was unmarried, had no children, and resided with his parents until about six months before his tragic death (resulting from a gunshot wound received while quelling a disturbance at a restaurant); that the decedent had provided security for a motel his parents owned, which they sold about six months before his death; that the decedent took care of his parents' lawn and their car and laid some tile for them; that the decedent took them out

to dinner frequently; and that although they were not financially dependent upon the decedent to any extent, they were emotionally dependent upon him

The decedent's father further testified that, sometime after his, the decedent's, death representatives from the self-insured came to his home and advised that the decedent's parents were not entitled to death benefits under the 1989 Act; that the self-insured sent the decedent's parents a check in the amount of \$2500.00 for the decedent's funeral expenses (see Section 408.186(a)(2)); and that the decedent's parents did not send a writing to the self-insured claiming to be the decedent's legal beneficiaries prior to their attorney's filing the Notice of Fatal Injury or Occupational Disease/Claim for Compensation for Death Benefits (TWCC-42) of which the hearing officer took judicial notice.

Mr. J testified that he is the self-insured's assistant director of human resources and risk management and that his duties include responsibility for workers' compensation claims; that the self-insured learned of the decedent's death on December 22, 1996; that subsequently, he and Ms. C visited the decedent's parents to express condolences, answer questions, and explain any applicable benefits; that they learned at this visit that the decedent was unmarried and without children and that his parents had not been financially dependent upon him; and that he explained to them that parents are not automatic legal beneficiaries of a decedent under the 1989 Act. Mr. J further testified that he first learned that the decedent's parents were claiming to be the legal beneficiaries under the 1989 Act at a benefit review conference (BRC) held on August 21, 1998, although he also indicated that there was some indication of their claim in a pre-BRC exchange of documents received from claimants in August 1998. The hearing officer took official notice of the first page of the TWCC-42 which bears a Commission date stamp showing receipt by the Commission on April 21, 1997. The hearing officer asked claimants when the self-insured was notified that claimants were contending they were the legal beneficiaries and their representative responded that the self-insured had notice when he spoke by telephone with Ms. C "sometime before August 1998" trying to get a hearing set. Mr. J stated that while the self-insured had waived any dispute as to the compensability of the decedent's death, it had not waived its right to dispute the status of the decedent's parents as his legal beneficiaries under the 1989 Act and that it disputed their status when it filed a Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) with the Commission on August 25, 1998. A copy of that TWCC-21 is in evidence as is an undated, unsigned copy of the TWCC-42. The August 25, 1998, TWCC-21 states that the self-insured "disputes that [claimants], parents of the deceased, are legal dependents as defined in [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 132.2 AND 132.6] Rules 132.2 and 132.6 of the Texas Workers' Compensation Act."

At the hearing, claimants argued that the self-insured should pay to them the death benefits provided for in the 1989 Act because the self-insured knew soon after the decedent's death that he was unmarried and without children and that claimants were his parents; because the self-insured paid \$2,500.00 to claimants to defray the funeral

expenses; and because the self-insured was required to pay the death benefits to the SIF within one year if there were no legal beneficiaries of the decedent and failed to do so.<sup>1</sup>

Section 408.182(d) provides that if there is no eligible spouse, no eligible child, and no eligible grandchild, 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. *And see* Rule 132.2.

The hearing officer found, among other things, that the decedent had no surviving spouse, children, or grandchildren; that on April 21, 1997, claimants filed their TWCC-42 for death benefits with the Commission; that claimants did not send/give the self-insured notice of their claim or a copy of the TWCC-42 until August 18, 1998, when they sent to the self-insured their exchange for the BRC; that the self-insured received claimants' exchange on August 19, 1998, and this was the first notice the self-insured received of the fact that claimants were claiming entitlement to death benefits based on dependent beneficiary status; and that the self-insured filed its contest to claimants' beneficiary status with the Commission on August 25, 1998. Based on the stipulated facts and these findings of fact, the hearing officer drew the legal conclusions that the self-insured did not waive its right to contest the status of claimants as legal beneficiaries of the decedent, and that claimants are not the legal beneficiaries of the decedent under the 1989 Act for death benefits since they were not financially dependent upon the decedent at the time of his death.

The two disputed issues, namely, whether the self-insured waived its right to contest liability for death benefits based on beneficiary status by untimely filing its controversion and whether claimants are the legal beneficiaries of the decedent presented the hearing officer with questions of fact to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)) and determines what facts have been established from the conflicting evidence (St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Section 403.006(a) provides that the SIF is a special fund in the state treasury. Section 403.007(a) provides that if a compensable death occurs and no legal beneficiary survives or a claim for death benefits is not timely made, the insurance carrier shall pay to the Commission for deposit to the credit of the SIF an amount equal to 364 weeks of the

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<sup>1</sup>We note that claimants did not cite the Commission to a provision of the 1989 Act or a Commission rule which expressly limits the time to contest issues related to the status of a claimant as a legal beneficiary of a deceased employee.

death benefits otherwise payable. Section 408.182(e) provides that if an employee is not survived by legal beneficiaries, the death benefits shall be paid to the SIF under Section 403.007. *And see* Rule 132.10. The hearing officer's Decision and Order concludes with the order that the self-insured is ordered to pay death benefits into the SIF in accordance with her decision, the 1989 Act and the Commission's implementing rules. The self-insured's appeal urges that because Sections 403.007 and 408.182(e) and Rules 132.10 and 132.11 violate the Texas Constitution, Article III, Section 52(a) and Article VIII, Section 1-e, the Commission has no legal authority or power to compel the self-insured to deposit such funds into the SIF and asks the Appeals Panel to determine the hearing officer's order void and order that it be vacated.

We decline to consider the constitutionality of the various provisions of the 1989 Act and the Commission rules challenged by the parties. The Appeals Panel has previously stated that a court, not the Appeals Panel, is the appropriate forum for mounting an attack on the constitutionality of the 1989 Act. *See, e.g.,* Texas Workers' Compensation Commission Appeal No. 950092, decided February 23, 1995, and the cases cited therein. *And see* Texas State Board of Pharmacy v. Walgreen Texas Co. et al., 520 S.W. 2d 845 (Tex. Civ. App.-Austin 1975, writ ref'd n.r.e.). The Texas Supreme Court determined the constitutionality of the 1989 Act in Texas Workers' Compensation Commission, et al. v. Garcia, 893 S.W.2d 504 (Tex. 1995). Similarly, the Appeals Panel has consistently declined to consider the constitutionality of Commission rules. *See, e.g.,* Texas Workers' Compensation Commission Appeal No. 94597, decided June 27, 1994, and Texas Workers' Compensation Commission Appeal No. 961295, decided August 15, 1996.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Joe Sebesta  
Appeals Judge