

APPEAL NO. 990636

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Texas Workers' Compensation Commission Appeal No. 982778, decided January 14, 1999, affirmed certain determinations arising from a hearing held on September 9, 1998, in regard to the death of decedent and identity of beneficiaries. The evidence was sufficient to support determinations that the wife of decedent and one stepchild, CY, were dependents of decedent. The only points remanded were in regard to providing evidence to show whether DWP (as so identified in the initial decision) was a dependent stepchild and whether there was any evidence that CP, stated to be a nephew, could qualify as a dependent in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.1 to 132.15. The hearing officer determined (it is not clear whether a hearing was held or not) that DWP (as identified in the decision on remand) is a dependent stepchild but that CP is not a dependent. Appellant (carrier) asserts that two findings of fact that address DWP as being a dependent and one conclusion of law that states he is a dependent stepchild are supported by no or insufficient evidence. There is no reply in the appeals file.

DECISION

We affirm.

The wife of decedent testified at the hearing conducted in September 1998 that she had not worked for four months prior to the death of decedent. She said the only other income received for CY and DWP was \$170.00 per month in disability payments for each, relative to their father; she added that these amounts were not sufficient to support them. She stated that decedent provided "95%" of their support, including rent, utilities, food, clothing, and school expenses. The order for remand contained in Appeal No. 982778 did not require further consideration or further evidence concerning money or other support provided to DWP, but rather sought documentary evidence that DWP is a dependent stepchild of decedent.

While the evidence provided by the wife of decedent, and mother of DWP, indicated that he received some part of his support from other sources, the evidence sufficiently supports the finding of fact that DWP met the dependency requirement in regard to decedent. What is more troubling is that the record before us still contains no documentary evidence relative to DWP. The hearing officer refers to "[c]laimants submitted a birth certificate for DWP but did not appear at the proceeding." He also states in regard to evidence, that "[e]xhibits and [w]itnesses listed are from the original proceeding with the exception of a certified birth certificate for DWP." He then lists as Hearing Officer's Exhibit No. 2, "[c]ertified copy of birth certificate for DWP." The hearing officer also listed carrier as having "appeared," apparently prior to the decision issued on remand. The record provided on appeal contains no Hearing Officer's Exhibit No. 2.

After comparing the carrier's appeal after the initial hearing in which it specifically pointed out that "beneficiaries failed to produce a certified copy of a birth certificate for PDP," and the carrier's appeal after the hearing officer's decision on remand, in which only general appeals were taken to the findings and conclusion in point, we conclude that a certified copy of the birth certificate was provided, although the Appeals Panel has not observed it.

Claimant did not appeal the determination that CP was not a dependent of decedent.

Based on representations made in the hearing officer's decision on remand, and with no assertion on appeal, as to the decision on remand, that a birth certificate was not presented, we affirm the decision and order of the hearing officer.

Joe Sebesta
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge