

APPEAL NO. 990791

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 March 17, 1999. The issues at the CCH were whether the respondent (carrier herein) is relieved of liability for death benefits to the appellant (claimant herein) pursuant to Section 409.007 and who are the proper beneficiaries of (deceased) as well as the period of entitlement for each beneficiary. The hearing officer concluded that the carrier was relieved from liability for death benefits to the claimant because the claimant failed to establish good cause for her late filing of her claim for workers' compensation benefits. The hearing officer determined that the proper beneficiaries of the deceased are his three minor children and that each of them is entitled to workers' compensation benefits until they reach the age of 18, unless they become are enrolled in an accredited educational institution, in which event they will be entitled to death benefits until no longer a full-time student or they reach the age of 25, whichever comes first. The entitlement to death benefits of the minor children has not been appealed by any party and has become final pursuant to Section 410.169. The claimant appeals the determination of the hearing officer that the carrier is relieved from paying death benefits to her. The claimant argues that the carrier did not timely raise the defense of late filing of the claim and that the carrier's acceptance of the claim constituted good cause for her late filing. The carrier responds that the requirement that a carrier dispute compensability does not apply when the carrier is not disputing a claim. The carrier also argues that it did dispute the claim within 60 days of receiving the claim so, if it were required to dispute, its dispute would be timely. The carrier finally argues that the hearing officer's finding of no good cause for the claimant's late filing is sufficiently supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The facts of this case are not in serious dispute. The parties stipulated that the decedent sustained a fatal compensable injury on _____, and that the claimant was the legal spouse of the decedent at that time. The claimant testified that shortly after her husband's death she hired an attorney (attorney 1). There was evidence in the record that attorney 1 filed a third-party action in negligence and products liability on the claimant's behalf. There was evidence that attorney 1 notified that employer to communicate with the claimant solely through him. There was evidence that the carrier contacted attorney 1 concerning the need for documentation concerning her entitlement to death benefits. There is also evidence that the Texas Workers' Compensation Commission wrote to the claimant offering her ombudsman assistance. The claimant testified that she gave all correspondence concerning her husband's death to attorney 1 unopened. There was evidence that on February 3, 1999, the claimant hired a second attorney to represent her in regard to her claim for workers' compensation. It was undisputed that the claimant first filed a claim for workers' compensation benefits on February 1, 1999.

Carrier filed three Payment of Compensation or Notice of Refused/Disputed Claim forms (TWCC-21). In the first, dated October 10, 1997, the carrier stated as follows:

Carrier will initiate indemnity benefits upon receipt of proper proof of dependency from beneficiaries.

In the second TWCC-21, dated October 26, 1998, the carrier stated as follows:

Carrier has not received a claim for death income benefits. A BRC [benefit review conference] has been requested.

In a Request for a BRC (TWCC-45), also dated October 26, 1998, the carrier stated as follows:

Carrier has requested a TWCC 42 from claimant's widow via [attorney 1] on several occasions. It has now been over a year and no claim has been filed. Carrier requests order to initiate DIBS to subsequent injury fund if no beneficiary claims.

In its third TWCC-21, dated March 12, 1999, the carrier stated as follows:

Carrier currently disputes existence of death beneficiaries as no claim for compensation for death benefits (TWCC-42) was filed within one year of employees death. [CCH] is currently scheduled for 3-17-99 to determine proper beneficiaries.

Section 409.007 provides in relevant part:

- (a) A person must file a claim for death benefits with the commission not later than the first anniversary of the date of the employee's death.
- (b) Failure to file in the time required by Subsection (a) bars the claim unless:
 - (1) the person is a minor or incompetent; or
 - (2) good cause exists for the failure to file a claim under this section.

The hearing officer in her decision cites our decision in Texas Workers' Compensation Commission Appeal No. 970753, decided June 9, 1997, for the proposition that the fact that the compensability of the death is accepted by a carrier does not absolve a beneficiary from the requirements of this section. In fact we stated as follows in that case:

There is no provision in this statute, as there is in the claim filing deadline for other benefits under Section 409.004, for an exception where the employer or carrier does not contest the claim. Thus, the fact that the compensability of the death is accepted by the carrier does not absolve persons claiming beneficiary status from filing claims for benefits.

There may be instances where the actions of a carrier may lay the basis for a finding of good cause for a claimant's failure to file a claim. However, in this case the hearing officer found that there was no cause and we find no basis to overturn that decision as a matter of law.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge