

APPEAL NO. 991006

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 19, 1999. The issue involved whether the appellant (carrier), a risk pool for municipal entities through which the self-insured city is insured, shall pay benefits to the respondent (subsequent injury fund (SIF)). The facts were stipulated, and it was undisputed that the deceased, a police officer with the self-insured city, died in the course and scope of employment. It was represented that he had been abandoned by a spouse for more than a year at the time of his death, and that there were no eligible beneficiaries.

The self-insured's sole argument was that the laws and rules requiring it to pay death benefits into the SIF were unconstitutional. The hearing officer held that the Texas Workers' Compensation Commission (Commission) was without authority to declare laws of the state unconstitutional, and rendered an order requiring such payment to the SIF.

The carrier has not appealed the merits of the compensability of the death or the lack of any beneficiaries. Rather, it seeks a declaration from the Appeals Panel that certain statutes and rules are unconstitutional. The SIF responds that the agency is without authority or jurisdiction to render such an order, and the order for payment should therefore be affirmed.

DECISION

The order to pay the SIF is affirmed. The Appeals Panel is without jurisdiction to seek the relief requested by the carrier.

The matter has been ably briefed by both sides. Essentially, the carrier contends that it cannot constitutionally be required to pay monies of a political subdivision into a fund that may result in payment to persons who are not residents or employees of the political subdivision. It argues that Sections 403.007 and 408.162 cannot constitutionally be applied to political subdivisions, as this would violate Article III, § 52 of the Texas Constitution, and that rules of the Commission that are set forth in 28 TEX. ADMIN. CODE §§ 132.10, 132.11, and 132.12 cannot constitutionally be applied for similar reasons. The SIF responds that the association that is challenging the order is not a carrier and does not have standing. The SIF further argues that the sections in question are not violated because of another constitutional provision.

An action for declaratory judgment setting forth similar legal arguments was brought in the 53rd District Court, Travis County, by the association for the carrier in this case, and a decision issued on January 6, 1999, finding favorable to the carrier's position. This decision was appealed to the Third Court of Appeals in (City), which last week found that the statutes in question were constitutional, and that the district court erred in finding to the contrary. Texas Workers' Compensation Commission and Subsequent Injury Fund v. Texas Municipal Intergovernmental Risk Pool (Docket No. 03-98-00169-CV), decided June 17, 1999.

We agree with the hearing officer and the SIF that the Commission cannot grant the sole relief requested in this appeal. Accordingly, we affirm the order against the self-insured to pay accrued death benefits to the SIF.

For these reasons, we affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Alan C. Ernst
Appeals Judge