

APPEAL NO. 991694

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 July 13, 1999. The sole issue at the CCH was who are the proper beneficiaries of (deceased herein). The hearing officer determined that Respondent, the claimant's widow (widow herein) was an eligible beneficiary of the deceased and was entitled to 100% of the deceased's death benefits. The hearing officer determined that appellant (minor herein) was not an eligible child of the deceased and was not entitled to workers' compensation death benefits. The minor's guardian appeals, arguing that the minor was entitled to death benefits because even though the parent-child relationship had been terminated, the minor was the deceased's biological child and he had not been adopted by another. The widow responds that the termination of the parent-child relationship between the decedent and the minor precludes the minor from entitlement to workers' compensation benefits as a beneficiary of the deceased.

DECISION

Reversed and rendered.

The facts of this case are not in dispute. The parties stipulate that on \_\_\_\_\_, the deceased suffered a compensable injury from which he died; that the widow was the deceased's surviving spouse; that the minor was the biological child of the deceased; that the parent-child relationship between the deceased and the minor was terminated by court order on July 21, 1997, but that the court order did not specifically address inheritance rights; that the minor is 17 years old and a senior in high school; and that the minor has not been legally adopted. No witnesses testified at the CCH and the primary documentary evidence in the case was the court order terminating the parent-child relationship. This order indicates that the termination was an agreed order between the deceased and the mother of the minor, who was the deceased's former wife. The reasons for the termination are not specified in the order but much of the order deals with past-due child support owed by the deceased.

The hearing officer's findings of fact and conclusions of law include the following:

**FINDINGS OF FACT**

1. Pursuant to Texas Labor Code Ann. Section 408.182, death benefits are paid to an "eligible child".
2. Texas Labor Code Ann. Section 408.182(f) defines an eligible child as ". . . a child of a deceased employee if the child is a minor . . ."
3. The parent child relationship was terminated by court order on July 21, 1997,

4. Claimant was not a child of [deceased] on the date of death.
5. [Deceased] had no legal obligation or duty to support [minor] on the date of death.
6. [Minor] is not an "eligible child".
7. [Widow] is [deceased's] surviving spouse.

### **CONCLUSIONS OF LAW**

3. [Minor] is not an "eligible child" of [deceased] and is not entitled to workers' compensation benefits.
4. [Widow] is an "eligible beneficiary" of [deceased] and entitled to 100% of the death benefits payable on this claim.

The appeal presents a question of law. Specifically, the question is whether or not workers' compensation death benefits are payable to a minor child of a deceased worker whose parental rights have been terminated when the minor child has not been adopted by another. The minor recognizes that there is case authority to support the proposition that a minor child who has been adopted by another is not entitled to such death benefits. The minor contends that these cases are distinguishable from the present case because of the fact that no adoption has taken place. The minor also contends that denying benefits to him constitutes invidious discrimination barred by the Fourteenth Amendment of the United States Constitution. The widow responds that statutory and case authority support the decision of the hearing officer.

Section 408.182 provides as follows in relevant part:

- (a) If there is an eligible child or grandchild and eligible spouse, half of the death benefits shall be paid to the eligible spouse and half shall be paid in equal shares to the eligible children . . . .
- (b) If there is an eligible spouse and no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.
- (f) In this section:
  - (1) "Eligible child" means a child of a deceased employee if the child is:
    - (A) a minor;

- (B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age; or
- (C) a dependent of the deceased employee at the time of the employee's death.

The 1989 Act does not specifically in its terms speak to the status of a biological child where the parent-child relationship has been terminated by court order. However, the 1989 Act does include the following definition of child at Section 401.011(7):

"Child" means a son or daughter. The term includes an adopted child or a stepchild who is a dependent of the employee.

TEX. FAM. CODE ANN. § 161.206(b) (Vernon 1996) provides as follows:

An order terminating the parent-child relationship divests the parent and child of all legal rights and duties with respect to each other, except that the child retains the right to inherit from and through the parent unless the Court otherwise provides.

In Patton v. Shamburger, 431 S.W.2d 506 (Tex. 1968) (hereinafter Patton), the Supreme Court of Texas considered the question of whether children of a deceased worker who had been adopted by another were entitled to workers' compensation death benefits. The majority in this case decided that such an adopted child was not entitled to such benefits, stating as follows at 508:

It is our opinion that the provisions of the adoption statute, Article 46a, are controlling. They create a new relationship of parent and child upon adoption. Old legal ties are completely severed except for inheritance by the child. The adopted child looks to his new parents for support and benefits. As the adoption statute says, the adopted child shall thereafter be deemed for every purpose the child of the adoptive parent. If the adopting parents also have natural children, they may look for compensation benefits only to their own parents. If the law were that the adopted children could look not only to their adoptive parents but to their natural father for compensation benefits, they would be in a superior position to that of the children of the natural parents. On the other hand, if the natural father had adopted other children who legally looked to him and needed him for support, under the other construction, the adopted children of the deceased workman would have to share the benefits with his natural children who had been adopted by others.

The Eastland Court of Civil Appeals followed Patton in its decision in Zanella v. Superior Insurance Company, 443 S.W.2d 95 (Tex. Civ. App.-Eastland 1969, writ ref'd). The question of the rights of a child adopted by another to receive workers' compensation death benefits on account of the death of natural parent was again considered in Banegas v. Holmquist, 535 S.W.2d 410 (Tex. Civ. App.-El Paso 1976, no writ) (hereinafter Banegas). The court in Banegas relied on Patton and rejected the minor's constitutional argument, stating as follows at 411-412:

Appellant's second point of error is that the judgment of the District Court operates as a taking of her property without due process of law and is contrary to the equal protection clause of the United States Constitution. In support of this position, Appellant cites Dickerson v. Texas Employers' Insurance Association, 451 S.W.2d 794, a no-writ case by the Dallas Court of Civil Appeals, decided in 1970. In Dickerson, the Court recognized the holding in Patton and Zanella as controlling, but reasoned that there was no constitutional question in those cases whereas one existed in the case before it. In Dickerson, one of the children of the deceased workman had been adopted and the others had not. The court held that to exclude the child who was adopted by a third person would amount to a denial of equal protection under the Fourteenth Amendment of the United States Constitution. This decision followed Levy v. Louisiana which declared that the exclusion of illegitimates from recovery under the Louisiana wrongful death statute was unconstitutional. 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968). There is a distinction between the illegitimate child situation and that of the adopted child. The illegitimate child is deprived of any recovery from any source; he has no other place to turn for a recovery of benefits, while the adopted child simply changes parents; he loses the right to recover from his natural parent, but he is given the right to recover from the adoptive parent.

In the present case, we are faced with a situation where there was no substitution of adoptive parent for natural parent. While the widow argues that this distinction makes no difference, applying the language of the Banegas case along with the reasoning of the Supreme Court's decision in Patton, we believe that it does. In Patton the majority clearly based its decision on the fact that the child should not be able to look to both the natural and the adoptive parent for workers' compensation benefits. Here, there is no adoptive parent to which the child could look. To deny the minor benefits under these circumstances is to deprive him of the right to any death benefit from a father under the 1989 Act. We do not believe that such a result is dictated either by the 1989 Act or by the precedent of Patton and Banegas. We find such a construction of the 1989 Act contrary to the doctrine that the 1989 Act should be liberally construed to effect its purpose. See Albertson's, Inc. v. Sinclair, 984 S.W.2d 958 (Tex. 1999); City of Del Rio v. Contreras, 900 S.W.2d 809 (Tex. App.-San Antonio 1995, writ denied). The 1989 Act clearly envisions that a child of a deceased worker be eligible for benefits.

More importantly the 1989 Act has a specific definition of what constitutes a child and states that a child is a son or daughter. There is no doubt that the minor is the son of the deceased. Thus, we believe that under the definition of child in the 1989 Act the minor is a child of the deceased. As a minor he would fit the definition of "eligible child" under Section 408.182(f)(1)(A). While the Supreme Court has determined that this does not apply to a child who is adopted by another, we find no reason to broaden this exception to include a child not adopted by another or create an exception to the definition of child in the 1989 Act.

The decision and order of the hearing officer are reversed and we render a new decision that the minor is an eligible child under the 1989 Act and entitled to benefits pursuant to Section 408.182 on account of the death of the deceased. Carrier is ordered to pay past due benefits in a lump sum with interest.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Robert W. Potts  
Appeals Judge