

## APPEAL NO. 000587

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 February 28, 2000. The record closed on February 29, 2000. With respect to the single issue before her, the hearing officer determined that the respondent (claimant beneficiary) was the legal beneficiary of (decedent). In its appeal, the appellant (carrier) contends that the hearing officer's determinations that the claimant beneficiary and the decedent were common-law husband and wife and, therefore, that she was a legal beneficiary for death benefits are against the great weight of the evidence. In her response to the carrier's appeal, the claimant beneficiary urges affirmance.

### DECISION

Affirmed.

The parties stipulated that the decedent sustained a compensable injury on \_\_\_\_\_, which resulted in his death and that the decedent's average weekly wage was \$343.85. The claimant beneficiary testified that she and the decedent began living together as husband and wife in June 1996, shortly after they graduated from high school. She stated that she and the decedent lived together as husband and wife with various family members continuously after June 1996 until March 1999 when they leased a home together. A copy of the residential lease agreement is in evidence and the claimant beneficiary is identified as the common-law spouse of the decedent in that document. The claimant beneficiary also introduced a hospital record dated January 3, 1998, which listed the decedent as guarantor and identified his relationship to the claimant beneficiary as her husband. That form further reflects that the claimant beneficiary was covered on the decedent's group health insurance with his then-employer. The claimant beneficiary offered the insurance enrollment forms from that employer, where the decedent requested coverage for himself and the claimant beneficiary as his spouse. The claimant beneficiary also introduced evidence that she and the decedent had a joint checking account and an affidavit from Ms. G, the vice president of the bank where they had the joint checking account. In her affidavit, Ms. G states that the claimant beneficiary and the decedent had a joint checking account since 1996 and that she considered them as common-law husband and wife. The claimant beneficiary offered some 14 other affidavits from friends, acquaintances and family members, which stated that the claimant beneficiary and the decedent lived together as husband and wife since 1996; that they introduced each other as spouses; and that the affiants considered the decedent and the claimant beneficiary as a "married couple because of what they said and how they acted together." Finally, the claimant beneficiary offered an order from the County Court in (county) County, designating the claimant beneficiary as the wife of the decedent and appointing her as the temporary administrator of the decedent's estate. The claimant beneficiary testified that she was subsequently appointed as the permanent administrator of the decedent's estate.

The carrier offered a copy of the decedent's death certificate from the Commonwealth of (city). That document reflects the decedent's marital status as "never married." The person who is identified as having provided the information for that document is one of the decedent's sisters, Ms. R. The carrier also introduced a copy of the decedent's obituary in which the claimant beneficiary is identified as the decedent's fiancée. The carrier introduced several employment forms that the decedent completed prior to beginning his employment with the employer where he sustained his fatal injury. On those forms, the decedent indicates that he is single and the claimant beneficiary is identified as his fiancée and designated as his beneficiary. The decedent also indicated that he was single on two W-4 Employee's Withholding Allowance Certificates.

Vernon's Texas Code Annotated, Family Code ' 2.401(a)(2) provides that in a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and represented to others that they were married. The existence of a common-law marriage is a question of fact for the hearing officer to decide. Texas Workers- Compensation Commission Appeal No. 961010, decided July 10, 1996. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

In this instance, there was conflicting evidence on the issue of whether the decedent and the claimant beneficiary entered into a common-law marriage. In its appeal, the carrier emphasizes the same factors it emphasized at the hearing and argues that based upon those factors the hearing officer should have rejected the evidence from the claimant beneficiary tending to demonstrate the existence of a common-law marriage. It was a matter left to the discretion of the hearing officer to consider the significance, if any, of the factors emphasized by the carrier. A review of the hearing officer's decision demonstrates that she was persuaded by the evidence presented by the claimant beneficiary that she and the decedent had entered into a common-law marriage. The claimant beneficiary's testimony and her documentary evidence provide sufficient evidentiary support for the hearing officer's determination that the claimant beneficiary was the decedent's common-law wife. Nothing in our review of the record demonstrates that the hearing officer's determination in that regard is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination, or the determination that the claimant beneficiary is, therefore, entitled to death benefits. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain, *supra*.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney  
Appeals Judge

CONCUR:

Judy L. Stephens  
Appeals Judge

Dorian E. Ramirez  
Appeals Judge