

APPEAL NO. 000995

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 28, 2000. The issue was whether appellant, Mr. V, became ineligible for death benefits, and, if so, on what date. The hearing officer determined that Mr. V became ineligible for death benefits on October 19, 1996. Mr. V appealed, contended that the hearing officer erred in determining that he was not enrolled as a full-time student during certain semesters, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he was a full-time student during those semesters and that he remains entitled to benefits because of the death of his mother. Respondent 1, Mr. NH, replied, contended that Mr. V's request for review was not timely filed; urged that the determinations of the hearing officer are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; and requested that the decision of the hearing officer be affirmed. Respondent 2, the carrier, replied; urged that the evidence is sufficient to support the decision of the hearing officer; and requested that it be affirmed.

DECISION

We affirm.

We first address the timeliness of the request for review of Mr. V. The decision of the hearing officer was distributed to the parties on April 13, 2000. The last day for an appeal to be filed by Mr. V was May 3, 2000; he mailed his appeal on that day; and his appeal was timely filed.

The Decision and Order of the hearing officer contains a statement of the evidence and quotations from sections of the 1989 Act and Texas Workers' Compensation Commission rules. Ms. MH died as the result of injuries sustained in the course and scope of her employment on \_\_\_\_\_. Mr. NH, who was nine years old at the time of the CCH, and Mr. V, who was born on October 19, 1978, are sons of Ms. MH. Mr. V became 18 years of age on October 19, 1996. He was not attending school at that time. Mr. V enrolled as a student in (ACC) for the spring semester of school year 1996-1997 in January 1997. A copy of Mr. V's official transcript from ACC is in evidence. It reveals that for the spring 1997 semester Mr. V registered for four three-hour courses for a total of twelve semester hours, that he withdrew from two courses, and did not pass a third course. For the fall of 1997 semester, Mr. V again registered for twelve hours, withdrew from two courses, and did not pass a third course. For the spring of 1998 semester, Mr. V registered for twelve hours and withdrew from all of the courses. For the fall of 1998 semester, Mr. V registered for six hours, withdrew from one course, and completed the other one. For the spring of 1999 semester, Mr. V registered for twelve hours and successfully completed each course. Mr. V testified that after the death of his mother, he suffered from depression; was treated by a psychiatrist; was advised by the psychiatrist to drop all courses; had treatment; and his grades for the last semester were A, B, C, and C.

Mr. L, the Director of Admissions and Records at ACC, testified that twelve hours is considered a full-time load at ACC; that if a student does not complete twelve hours during a semester, the student is not considered a full-time student; that a student who enrolls for twelve hours and withdraws from a course is not classified as a full-time student; that a student who has less than twelve hours of classes because of withdrawing from a course or courses is not considered a full-time student and is not eligible for financial aid; and that the records of ACC reveal that the spring of 1999 semester is the only semester that Mr. V was considered to be a full-time student.

Section 408.183, DURATION OF DEATH BENEFITS, provides in part:

- (c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive benefits until the child attains the age of 18.
- (d) A child eligible for death benefits under Subsection (c) who at age 18 is enrolled as a full-time student in an accredited educational institution or a child who is eligible for death benefits because on the date of the employee's death the child is enrolled as a full-time student in an accredited educational institution is entitled to receive or to continue to receive, as appropriate, benefits until the earliest of:
  - (1) the date the child ceases, for a second consecutive semester, to be enrolled as a full-time student in an accredited educational institution; . . . .

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.4(f) (Rule 132.4(f)) provides in part "[a] child shall only be considered a full-time student if the child meets the educational institution's requirements for a full-time student in the child's course of study." Mr. L testified about ACC's policy concerning full-time students, reviewed the transcript concerning the claimant, and stated that the spring 1999 semester was the first semester that Mr. V was a full-time student. Mr. V reached the age of 18 on October 19, 1996.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. The hearing officer made findings of fact that Mr. V reached the age of 18 on October 19, 1996; that at age 18 he was not enrolled as a full-time student; and that he did not qualify as an enrolled full-time student for the spring semester of 1997, the fall semester of 1997, the spring semester of 1998, or the fall semester of 1998. He made a conclusion of law that Mr. V became ineligible for death benefits as of October 19, 1996.

Those determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and are affirmed. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Alan C. Ernst  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge