

APPEAL NO. 002112

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 August 10, 2000. The issues at the CCH were whether the appellant, the claimant minor child, was the beneficiary of the deceased, or, in the alternative, whether "the administrative writ of withholding is an allowable lien under Section 408.203." Although awkwardly worded, the second issue actually concerned whether a child support arrearage for which the deceased's wages were being garnished would serve to compel the respondent (carrier) to make payment of that arrearage from death benefits due and payable on account of the deceased's death.

The hearing officer held that because the claimant minor child had been legally adopted by her mother's second husband at the time of the deceased's death, she was not a beneficiary of the deceased. On the second matter, the hearing officer held that the "administrative writ," issued pursuant to Chapter 158, Texas Family Code, was not an "allowable lien" under Section 408.203 of the 1989 Act.

The mother of the claimant minor child has appealed on her behalf, arguing that the child had a close relationship with the deceased and that all necessary paperwork to perfect a lien for child support arrearage has been filed. The carrier responds that the lien could only be enforced in this instance against any workers' compensation benefits actually received by the deceased during his life, and does not lie against death benefits that are required to be paid to beneficiaries. The carrier points out that the claimant minor child is not a beneficiary because she was legally adopted by her mother's second husband.

DECISION

Affirmed that the claimant minor child is not an eligible beneficiary of the deceased. Affirmed that the carrier was not obligated to pay death benefits to the claimant minor child due to an arrearage of child support.

The facts were essentially undisputed. The claimant minor child was born to the deceased in 1984, and her parents were divorced in 1987. The deceased was required to pay monthly child support. He became delinquent in making these payments.

The claimant minor child was subsequently adopted by Mr. H, her mother's second husband, in 1991. Part of the adoption proceeding involved termination of the deceased's parental rights. The deceased suffered his fatal injury on _____.

The claimant minor child's mother sought, through the Texas Attorney General's Office, collection of the amount of child support that was due up to the date that the claimant minor child was adopted. A notice of lien was filed on January 22, 1999, and the Attorney General's Office additionally filed in the county court at law in _____ County, Texas, an "Administrative Writ of Withholding" as authorized by the Texas Family Code,

Chapter 158, Subchapter F, directing the deceased's employer to pay a certain amount of his wages over to the office of the Attorney General's Child Support Enforcement Unit. These payments were made until the death of the deceased (presumably through _____, although this was not clearly developed.)

It has been long settled that the claimant minor child, having been legally adopted by another, is not an eligible minor beneficiary of the deceased. Patton v. Shamburger, 431 S.W.2d 506 (Tex. 1968). A nonbiological or non-adoptive child of an injured worker may only recover benefits if that person is a dependent stepchild of the deceased. Section 408.182(f)(1)(C); Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 132.4 (Rule 132.4). An order terminating parental rights divests the parent and child of all legal rights and duties, except that the child retains the right to inherit through the parent unless otherwise provided by the court, Texas Family Code § 161.206.

Workers' compensation death benefits are not part of the estate of the deceased, but are paid in accordance with the 1989 Act. Such benefits are generally exempt from legal process unless otherwise provided. Section 408.201. While Section 157.317 of the Texas Family Code indicates that a lien for child support attaches against all real or personal property "owned by the obligor" and includes "a claim" for workers' compensation, this is not the only statute that governs whether a lien may be attached to workers' compensation benefits. The 1989 Act makes further provision for liens:

Section 408.203. ALLOWABLE LIENS. (a) An income or death benefit is subject only to the following lien or claim, to the extent the benefit is unpaid on the date the insurance carrier receives written notice of the lien or claim, in the following order of priority:

- (1) an attorney's fee for representing an employee or legal beneficiary in a matter arising under this subtitle;
- (2) court-ordered child support; or
- (3) a subrogation interest established under this subtitle.

Death benefits are expressly covered as amounts subject to the listed liens. The carrier's assertion that only death benefits being received by the deceased at the time of his death are subject to liens is not entirely correct, as it would render Section 408.203(a)(1) a nullity. So, to an extent, this statute provides for liens against death benefits payable because of the death of an injured worker, and not just those benefits that were paid to the deceased. Because child support is ordered by the court as part of a decree of divorce, we cannot agree that there must be further reduction of an arrearage to a judgment for it to qualify as "court ordered."

However, Section 408.203(a), standing alone, does not resolve the question of whether or not the carrier must make payment for child support from the death benefits

payable to others on account of the fatal injury of the deceased worker. Section 408.203(b) defines when a lien must be paid if it is for child support. This provides that payment from the benefit shall be made only "as required by":

- (1) an order withholding income under Subchapter A, Chapter 158, Family Code; or
- (2) a writ of income withholding under Subchapter D, Chapter 158, Family Code.

Plainly, the provisions in Section 408.203(b) qualify the child support lien established in Section 408.203(a). The Administrative Writ of Withholding that is in evidence in this case is authorized under Subchapter F of Section 158 of the Texas Family Code, which provides for issuing non-judicial writs against employers for wages. As such, the Administrative Writ of withholding is not one of the named orders or writs in Section 408.203(b) which obligates the carrier in this case to pay such death benefits. Because Subchapters A and D of Chapter 158 of the Texas Family Code deal with judicial documents for garnishment of earnings of the person obligated to pay child support, the carrier's argument that a lien for child support may not be paid from death benefits payable to other beneficiaries is well-taken.

As these death benefits were not otherwise the property of the deceased under the Texas Family Code, § 157.317, there is no lien that attaches to them for the child support arrearage. Consequently, we affirm the hearing officer's finding that there are no death benefits in this case eligible for garnishment.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge