

APPEAL NO. 002125

Following a contested case hearing held on August 3, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that (decendent) was injured in the course and scope of his employment and that the injuries resulted in his death on _____; that the decendent was intoxicated at the time of his injuries; and that (daughter) is a proper legal beneficiary of the decendent, but that Ms. P was not the wife of the decendent and is not a proper legal beneficiary. The appellants, Ms. P and daughter (claimant beneficiaries), by and through her mother, assert that the hearing officer's determinations that Ms. P is not a legal beneficiary and that the decendent was intoxicated at the time the decendent sustained the injuries which resulted in his death are against the great weight and preponderance of the evidence and that the decision that Ms. P is not a legal beneficiary and that the respondent (carrier) is not liable for the payment of benefits should be reversed. The carrier replies that the hearing officer was correct in determining that the presumption of sobriety had been rebutted, that the claimant beneficiaries had failed to prove the decendent was not intoxicated, that the hearing officer was correct in determining that Ms. P was not a proper legal beneficiary because the evidence was insufficient to prove that Ms. P was the decendent's wife pursuant to a valid informal marriage, and that the hearing officer's decision should be affirmed.

DECISION

Affirmed in part, reversed and rendered in part.

On _____, as he was driving a cement truck in a private, gated subdivision, the decendent lost control of the truck, was ejected from the truck as it rolled over, and sustained massive injuries to his head resulting in his death. While it is undisputed that the decendent was in the course and scope of his employment at the time of his death, the carrier asserted that the decendent was intoxicated at the time of the accident by reason of the ingestion of cocaine and it is relieved from liability for the payment of death benefits. The claimant beneficiaries assert that Ms. P and daughter are both proper legal beneficiaries of the decendent; that the carrier failed to prove that the decendent was intoxicated at the time of his death or, alternatively, that the great weight and preponderance of the evidence proved that the decendent was not intoxicated; and that the carrier is liable for the payment of death benefits.

The hearing officer made two threshold determinations that are at issue in this appeal. First, that Ms. P was not the "common law wife" of the decendent, and, second, that the carrier had rebutted the presumption of sobriety and the claimant beneficiaries had not proven sobriety after the presumption was rebutted. In this decision, we will address first the finding that Ms. P and the decendent were not husband and wife and that Ms. P is not, thereby, a proper legal beneficiary.

The Texas Family Code provides that a man and woman may be married without formalities. Section 2.401 of the Family Code provides:

Sec. 2.401. PROOF OF INFORMAL MARRIAGE. (a) In a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

- (1) a declaration of their marriage has been signed as provided by this subchapter; or
- (2) the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

Ms. P testified that she and the decedent had been dating since she was 15 years old. At 15 she was impregnated by the decedent and their daughter was born when Ms. P was 16 years old. According to the birth certificate admitted into evidence, their daughter was born on August 15, 1990. Ms. P testified that she and the decedent had lived together at her mother's house, then the couple purchased a home of their own in November 1999, and had not separated before the decedent's accidental death. Ms. P testified that she and the decedent had agreed to be married, had exchanged rings, and had planned a formal wedding ceremony for June 2000. Ms. P also offered evidence that the decedent had designated her as his beneficiary, listing her as his wife, when he enrolled in a profit sharing plan while employed by (former employer). The carrier offered no evidence to rebut Ms. P's assertions that she and the decedent had agreed to be married, that they had lived together after that agreement, and that they had held each other out as husband and wife to the public. Nor did the carrier offer any evidence to rebut that the decedent had listed Ms. P as his wife on his profit sharing plan, holding out to the world that she was his wife. Additionally, the claimant beneficiaries offered into evidence two uncontroverted statements, one from the decedent's father and another from the decedent's mother. In her statement, the decedent's mother wrote:

[M]y son [the decedent] and [Ms. P] lived as husband and wife since they were 15 years old and also everyone knew them as husband and wife and they had a Daughter together. . . . I can verify that anywhere and anytime

The evidence that the decedent and Ms. P agreed to be married, and held themselves out to others as husband and wife and lived together after so agreeing, is uncontroverted. The hearing officer gave no reasons for finding this evidence, which is compelling to us, not believable. Further, we find no evidence to support the hearing officer's determination that this evidence is unconvincing. Under these circumstances, the hearing officer's determination that Ms. P was not the common-law wife of the decedent is so against the great weight of the evidence as to be clearly wrong and to hold otherwise

would be manifestly unjust. We therefore reverse the hearing officer's determination that Ms. P was not the spouse of the decedent.

The claimant beneficiaries also allege that the hearing officer has committed reversible error in determining that the decedent was intoxicated at the time he sustained the injuries which led to his death. The claimant beneficiaries specifically complained of Findings of Fact Nos. 9 and 11, and impliedly complained of Findings of Fact Nos. 7, 8, and 10. Finding of Fact No. 12 was also alleged to be error, but that finding merely recites the applicable law, based on Findings of Fact Nos. 9 and 11, that the carrier is relieved of liability after the rebuttal of the presumption of sobriety and the subsequent failure of the claimant beneficiaries to prove sobriety. The complained-of findings of fact read as follows:

FINDINGS OF FACT

7. The Deceased had a long record of cocaine use.
8. The Deceased had cocaine metabolites in his urine at the time of his death.
9. The Deceased was driving his loaded cement mixer truck, rated at 64,000 pounds, at an estimated speed of 60 miles per hour in a 30 miles per hour speed zone as he came over the crest of a hill and headed down the hill at an excessive rate of speed with the transmission in neutral, when he lost control of the vehicle and was in the accident which caused his death.
10. These circumstances were sufficient to set aside the presumption of sobriety and put the burden on the claimed beneficiaries to show that the Deceased was not in a state of intoxication.
11. The claimed beneficiaries did not show that the Deceased had the normal use of his faculties or that he was otherwise not intoxicated.
12. The Carrier was relieved of liability since the claimed beneficiaries did not meet their burden of showing that the Deceased was not in a state of intoxication.

In attacking the hearing officer's findings, the claimant beneficiaries point out that the hearing officer mistakenly found as a fact that the decedent was driving 60 miles per hour immediately before the accident. While the claimant beneficiaries' point is well-taken, that mistake is not sufficient to set aside the hearing officer's determinations that the decedent was driving at an excessive rate of speed with the transmission in neutral and lost control of the vehicle. Although the claimant beneficiaries assert as erroneous the hearing officer's finding that the truck was in neutral, that determination is supported by the

evidence presented by way of eyewitness accounts. The carrier presented evidence from two eyewitnesses who stated that they saw the truck go past them at a high rate of speed and that the sound of the truck as it passed indicated that the transmission was not engaged. The investigating officer, an officer with the Texas Department of Public Safety, determined that unsafe speed, below the limit, was a contributing factor in the accident. The evidence before the hearing officer was sufficient to support his finding except as to the speed of the truck.

The claimant beneficiaries also assert that the hearing officer erred in finding that they had not proven that the decedent was not intoxicated at the time of his accident. In so asserting, the claimant beneficiaries cite evidence favorable to their position that the decedent may have ingested cocaine prior to the accident, but there was no cocaine in his blood which would indicate intoxication. The claimant beneficiaries and the carrier both presented evidence on the issue of intoxication. The claimant beneficiaries offered evidence from the _____ County Deputy Medical Examiner, Dr. P, and Dr. C. Both Dr. P and Dr. C stated that in their opinions the presence of cocaine metabolites in the decedent's urine did not indicate that he was intoxicated by the introduction of a controlled substance into his blood. In contrast, the carrier offered a report by Dr. K. Dr. K requested that a sample of the decedent's urine be forwarded to a laboratory for testing and noted that gas chromatography/mass spectrometry testing, done several months after the specimen was collected, revealed the existence of cocaine metabolite, benzococaine, at a level of 546 ng/ml of urine. Based upon the results of the test, Dr. K was of the opinion that the decedent had lost the normal use of his physical and mental faculties by reason of the introduction of a controlled substance into his body.

We find no error in the hearing officer's determination that the presumption of sobriety had been rebutted by the carrier. At that point, the burden shifted to the claimant beneficiaries to prove sobriety. There was conflicting evidence presented to the hearing officer on that issue, and the hearing officer, as the trier of fact, was required to resolve the conflicts in the evidence. The hearing officer, as the trier of fact, 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. 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. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

In a case such as the one before us where both parties present evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence

could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). After considering all of the evidence before him, the hearing officer determined that the claimant beneficiaries had not proven that the decedent had the normal use of his mental and physical faculties at the time of the accident leading to his death. Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer on the fact issue before him, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We reverse the hearing officer's determination that Ms. P is not a proper legal beneficiary of the decedent, but affirm the hearing officer's determination that the decedent was in a state of intoxication at the time of the accident which resulted in his death. Having affirmed the factual determination that the decedent was intoxicated at the time of the accident, we also affirm the hearing officer's conclusion of law that the carrier is not liable for the payment of benefits in this matter.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge