

APPEAL NO. 010156

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 3, 2001, a hearing was held. The hearing officer presiding, to determine the legal beneficiaries of (decedent). The hearing officer determined that: (1) (claimant) was not an eligible spouse or legal beneficiary of the decedent, and (2) CT was a legal beneficiary (eligible child) of the decedent. The claimant appealed the hearing officer's determination that she is not an eligible spouse or legal beneficiary of the decedent, contending that the great weight and preponderance of the evidence established that she was the decedent's common-law wife. The hearing officer's decision with regard to CT was not appealed by either party and is, therefore, final. The respondent (carrier) urges affirmance of the hearing officer's decision and order.

DECISION

Reversed and rendered.

The decedent sustained a fatal injury on _____. At the time of his death, the decedent and the claimant had been living together for approximately five years, since March 1994. Notwithstanding, the claimant was legally married to another individual until April 19, 1996, when a decree of divorce was entered. The claimant testified that she and the decedent lived together as husband and wife, and had planned on having a formal wedding ceremony sometime in September 2000, though no specific arrangements had been made. This testimony was corroborated by friends and family members, who stated that the couple lived together and held themselves out as husband and wife. The claimant further testified that she and the decedent pooled their income to meet their financial responsibilities, although they maintained a separate checking account and held other accounts in their separate and individual names. Additionally, the claimant testified that she and the decedent filed separate tax returns, in part, for financial reasons and because they did not know whether they could legally file a joint return. After the decedent's death, the claimant was found by the Social Security Administration and the Probate Court of County, Texas, to be the decedent's legal beneficiary. The claimant was listed as the decedent's wife in his obituary and on his death certificate.

The hearing officer erred in determining that the claimant was not an eligible spouse or legal beneficiary of the decedent. 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 hearing officer, in her discussion of the facts, comments that she is of the opinion that the claimant's daughter "is entitled to receive workers' compensation benefits

as a surviving stepchild of [the decedent], pursuant to Sections 401.011(7) and 408.182 of the [1989] Act.” This is reflected in the decision portion of the hearing officer’s decision and order when the hearing officer determined that “[CT] was a dependent stepchild of [the decedent] at that time.” Under Section 401.011(7), the term “child” includes an adopted child or a stepchild who is a dependent of the employee. The term “stepchild” means a child of one’s spouse by a previous marriage. BLACK’S LAW DICTIONARY 1425 (7th ed. 1999). Therefore, in order for the claimant’s daughter to be the surviving stepchild of the decedent, as the hearing officer found, the claimant must be the surviving spouse. The hearing officer’s determination that the claimant is not an eligible spouse of the decedent is in conflict with the determination that CT is the surviving stepchild of the decedent. In the absence of evidence showing that the claimant abandoned the decedent for longer than one year immediately proceeding his death, the claimant is eligible for death and burial benefits. Section 408.182. The hearing officer’s determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are reversed and a new decision is rendered that the claimant is an eligible spouse and legal beneficiary of the decedent.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge