

## APPEAL NO. 010416

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 6, 2001. With hearing officer presiding as hearing officer, concerning the following issues:

1. Are [the guardians] entitled to receive payment of death benefits on behalf of the minor children [hereinafter referred to as the minor children]?
2. Who are the proper legal beneficiaries of deceased?

The hearing officer incorrectly stated in the Statement of the Evidence and in Finding of Fact No. 4 that the guardians were the deceased's parents and were not dependent on the deceased at the time of his death. Both the guardians and the appellant/cross-respondent (carrier) filed paperwork within the time allowed for an appeal of the hearing officer's decision. The guardians seek correction of the Statement of the Evidence and Finding of Fact No. 4, and the carrier seeks correction of Finding of Fact No. 4.

### DECISION

Affirmed as reformed.

The evidence was uncontroverted that the deceased has no children from his current marriage and that he has four children from his prior marriages. There are two adult children from the deceased's earlier marriage and each of those two children has a child. Neither the two adult children nor the deceased's two grandchildren were dependent upon the deceased. The minor children are from the deceased's marriage to (TM). The guardians, parents of TM, were appointed, along with TM, as Joint Managing Conservators for the minor children. The hearing officer determined that the guardians are entitled to receive death benefits on behalf of the minor children and further determined that the proper legal beneficiaries of the deceased are (SM), the widow, and the minor children.

In line 3 of the Statement of the Evidence, the words "four children by a prior marriage" are reformed to "four children by two prior marriages" and in lines 9 and 10 the words "[the guardians], [deceased's] parents testified that they were not dependent on [deceased] at the time of his death" are reformed to "[deceased's] parents were not dependent on [deceased] at the time of his death."

Finding of Fact No. 4 is reformed to "Deceased's parents were not dependent on deceased at the time of his death."

These changes correctly reflect the evidence in the case, and clarify the misconception that the guardians are the deceased's parents. They are, in fact, the parents of his ex-wife, TM, who is the mother of the deceased's minor children. The guardians are the maternal grandparents and, by court order, Joint Managing Conservators of the deceased's minor children.

The decision and order of the hearing officer, as reformed, are affirmed.

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Michael B. McShane  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge