

APPEAL NO. 012272
FILED NOVEMBER 12, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Our decision in Texas Workers' Compensation Commission Appeal No. 011011, decided June 20, 2001, affirmed the conclusions of the hearing officer, in her Decision and Order signed on April 24, 2001, that the death of (decedent) on or about _____, was not compensable and was not in the course and scope of his employment, and that the appellant/cross-respondent (carrier) did not waive its right to contest the compensability of the claimed fatal injury as it timely contested the compensability of the fatality pursuant to Section 409.021(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6(b) (Rule 124.6(b)). However, our decision did reverse the determination that the decedent's death was not a result of his wilful intention to injure himself and remanded for further consideration of that issue because the hearing officer failed to correctly apply the burden of proof applicable to the intentional injury exception to liability (Section 406.032(1)(B)). Following the remand hearing held on January 29, 2001, where no new evidence was admitted but additional closing arguments were made, the hearing officer resolved the remanded issue by correctly applying the burden of proof. The hearing officer found that the carrier adduced sufficient probative evidence to rebut the presumption against suicide and shift the burden to the claimants to prove that the decedent had not wilfully injured himself, and that the claimant's evidence was sufficient to establish that the decedent's death was not the result of his having wilfully injured himself. Although our decision in Appeal No. 011011, *supra*, affirmed the hearing officer's determinations of the course-and-scope and carrier-waiver issues, the hearing officer nevertheless concluded on remand that the decedent's death was not compensable and that the carrier had not waived its right to contest the compensability of the fatal injury.

The carrier has filed an appeal challenging the hearing officer's findings relative to the intentional-injury issue, and the claimants have filed an appeal challenging the course-and-scope and carrier-waiver determinations. The file does not contain responses from the parties.

DECISION

Affirmed.

Our decision in Appeal No. 011011 recites the pertinent evidence, and no new evidence was admitted on remand. The hearing officer complied with the remand instructions, correctly applied the burden of proof on the intentional-injury issue, and made additional findings of fact on that issue which sufficiently support the conclusion of law. We are satisfied that the challenged findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge