

APPEAL NO. 013060  
FILED FEBRUARY 1, 2002

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 May 29, 2001, and October 23, 2001, with the record closing on November 12, 2001. The hearing officer resolved the disputed issues by concluding that the appellant, (claimant), is not a legal beneficiary of the deceased; that she did not file a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year of the injury as required by Section 409.003; that good cause does not exist for failing to timely file a claim; and that the carrier (respondent) contested the claim. The claimant appeals, arguing that the findings and conclusions are against the great weight and preponderance of the evidence and are contrary to Texas Family Code § 2.401. The claimant additionally argues that the hearing officer applied personal bias in reaching his decision. The carrier replies, urging that the fact findings and conclusions asserted as erroneous by the claimant are supported by sufficient evidence and that the hearing officer correctly applied the applicable law.

DECISION

Affirmed.

The claimant testified that she came to the United States with the deceased in \_\_\_\_\_; and that she and the deceased agreed to be married, lived together in city 1 as husband and wife, and held themselves out to others to be married. She further testified that they did not have a bank account and that no utilities or credit accounts of any kind existed in their names jointly. She testified that she, as well as the deceased, gave their employers false information regarding their legal eligibility status to be in the United States. The claimant additionally testified that she and the deceased were planning to go through a formal ceremonial wedding and that they told others they were planning to get married.

One of the deceased's sisters testified that the deceased told her he was married to the claimant and that they lived in her house and held themselves out to be married. She also acknowledged that another of the deceased's sisters did not agree that the claimant and the deceased were married. One of the deceased's brothers testified at the CCH that the deceased and the claimant held themselves out to be married. However, the evidence also reflected that in a meeting with the employer after the deceased was injured, the same brother told the employer that the deceased was not married and had been living with his girlfriend for about a year.

The carrier offered a copy of the deceased's death certificate. The document reflects the deceased's marital status as "never married." The person who is identified as having provided the information for that document is one of the deceased's brothers. The claimant introduced various employment forms filled out by the deceased which identified

his marital status as married. However, the evidence also reflected that the deceased gave false information on some of the same forms.

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 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

In her appeal, the claimant argues that she established as a matter of law that she was the widow of the deceased. However, there was conflicting evidence on the issue of whether the deceased and the claimant entered into a common-law marriage. A review of the hearing officer's decision demonstrates that he was persuaded by the evidence presented that a common-law marriage was not established. The testimony and the documentary evidence provide sufficient evidentiary support for the hearing officer's determination that the claimant was not the deceased's common-law wife. Nothing in our review of the record demonstrates that the hearing officer's determination in that regard is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain, supra.

Also at issue on appeal is whether the claimant timely filed her claim for death benefits within one year, whether there was good cause for such failure to do so, and whether the carrier contested the claim. Section 409.007 provides, in relevant part:

- (a) A person must file a claim for death benefits with the commission not later than the first anniversary of the date of the employee's death.
- (b) Failure to file in the time required by Subsection (a) bars the claim unless:
  - (1) the person is a minor or incompetent; or
  - (2) good cause exists for the failure to file a claim under this section.

There is no provision in this statute, as there is in the claim-filing deadline for other benefits under Section 409.004, for an exception where the employer or carrier does not contest the claim. Thus, the fact that the compensability of the death is accepted by the carrier does not absolve persons claiming beneficiary status from filing claims for benefits. Texas Workers' Compensation Commission Appeal No. 970753, decided June 9, 1997.

There may be instances where the actions of a carrier may lay the basis for a finding of good cause for a claimant's failure to file a claim. However, in this case the hearing officer found that there was no good cause, and we find no basis to overturn that decision as a matter of law.

The evidence reflected that although the carrier did not dispute that the deceased's death resulted from an injury sustained in the course and scope of employment, it contended that there were no eligible beneficiaries.

The claimant contends that the hearing officer had personal bias and applied "his own middle class white values to the evidence" in reaching his decision. The subject of a judge's bias or prejudice is discussed in Tex. Jur. 3rd, Judges, §§ 27-29 (1986) and nowhere within that discussion do we find any circumstance wherein a judge's personal bias or prejudice has been shown through the mere recitation of testimony of record in a decision. We disagree with the claimant's allegation. The credibility of the witnesses and the weight to be given to their testimony was within the province of the hearing officer. There is no indication in the record that the hearing officer was biased as to any issues regarding race or culture.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C. T. CORPORATION SYSTEMS  
350 N. ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Terri Kay Oliver  
Appeals Judge