

APPEAL NO. 020317
FILED MARCH 26, 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 January 9, 2002. The hearing officer determined the appellant (claimant beneficiary) is not a proper legal beneficiary of the workers' compensation death benefits payable on account of the compensable death of (decedent) on or about _____. The claimant beneficiary has appealed, contending that the hearing officer erred in finding that he is not the biological child of the decedent and in concluding that he is not the proper legal beneficiary. The claimant beneficiary respondents did not respond. The self-insured respondent urges affirmance of the hearing officer's determination.

DECISION

Affirmed.

The claimant beneficiary and his mother testified that he was the biological son of the decedent, that he spent weekends and holidays with the decedent, and that the decedent referred to him as his "son." The mother also testified that on the day of the claimant beneficiary's birth, hospital personnel did not allow her to list the decedent as the father on the claimant beneficiary's birth certificate because they were not married. She did not introduce a birth certificate at the CCH. The mother indicated that the decedent did not provide child support for the claimant beneficiary and that she never initiated legal action to obtain such support. The decedent's ex-wife testified that the decedent had expressed doubt as to the paternity of the claimant beneficiary. However, she acknowledged that the decedent and the claimant beneficiary looked similar. The decedent's sister testified that the decedent and the claimant beneficiary resembled each other and that she submitted an affidavit to the Social Security Administration to attest to the decedent's paternity. In evidence was the claimant beneficiary's Social Security survivor's benefits award and an obituary listing him as a son of the decedent.

The hearing officer did not err in determining that the claimant beneficiary is not a proper beneficiary. Section 408.182 provides for distribution of death benefits between and among beneficiaries, and Section 408.182(f) defines "eligible child." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.4(b) and (c) (Rule 132.4(b) and (c) state as follows:

- (b) A person claiming benefits as the biological or adoptive son or daughter of a deceased employee shall submit proof of relationship to the deceased employee to the carrier or along with the claim for death benefits. The claimant shall submit a certified copy of the claimant's birth certificate or decree of adoption. If these documents do not exist, the claimant shall submit other proof of relationship, such as baptismal records, court orders establishing paternity, voluntary

admissions of paternity, or affidavits of persons who have personal knowledge of the relationship to the deceased employee.

- (c) If there are two parents listed on the claimant's birth certificate, but deceased employee is not listed, the claimant is presumed to be the child of the parents actually named and is presumed not eligible to receive death benefits. The presumption may be rebutted by credible evidence.

The claimant beneficiary asserts that “[t]he hearing officer’s decision is tantamount to a public policy that one can never qualify as a beneficiary under the [1989] Act in the absence of a birth certificate.” We do not agree. The hearing officer stated that “[e]ven if Claimant Beneficiary had offered a certified copy of his birth certificate into evidence at the [CCH], the Hearing Officer nonetheless would be inclined to find that he had not met his burden of proof in this case, since the Hearing Officer is not persuaded by the testimony regarding the alleged reason that Decedent was not listed as [the claimant beneficiary’s] father on his birth certificate, and therefore is not inclined to accept the remainder of her [CCH] testimony at face value.” The hearing officer distinguished the decision in Texas Workers’ Compensation Commission Appeal No. 941158, decided October 12, 1994, noting that in that case a birth certificate (which did not list the father’s name) was offered as evidence.

We are satisfied that the challenged determination of the hearing officer is not 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, 176 (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.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**LC
P.O. BOX 20078
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge