

APPEAL NO. 021433
FILED JULY 29, 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 was held on April 16, 2002. The hearing officer decided that the respondent (beneficiary 2), is a legal beneficiary of (decedent). Appellant 1 (carrier) appeals, contending that the hearing officer erred because he admitted irrelevant evidence, his decision is vague and ambiguous, and because respondent (beneficiary 2) is not the legal beneficiary of the decedent. Appellant 2 (beneficiary 1) also appeals, contending that beneficiary 2 is not the legal beneficiary of the decedent. Beneficiary 2 responds, urging affirmance.

DECISION

Affirmed as modified.

The carrier and beneficiary 1 contend that the hearing officer erred in his determination that beneficiary 2 is a legal beneficiary and is entitled to 50% of the death benefits, because a DNA test excludes the decedent as the biological father of beneficiary 2. While on its face this may seem to present proof positive that the decedent was not the biological father, we note that the decedent's DNA was not provided; rather, the DNA of his purported siblings and parents was submitted. Whether the DNA results were credible was for the hearing officer to decide. There was evidence to support the hearing officer's determination that beneficiary 2 was the child of the decedent. The decedent had accepted beneficiary 2 as his son and had never repudiated that fact prior to his death. Further, the decedent's name was on beneficiary 2's birth certificate and the mother of beneficiary 2 testified that decedent was his father.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record and resolved what facts were established. We conclude that the hearing officer's determinations are sufficiently supported by the record and are 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).

The carrier also contends that the hearing officer's decision is ambiguous wherein it states, "Accrued, but unpaid death benefits, are to be paid in a lump sum with interest" and would like for us to modify the decision so that it is responsible for benefits only from the date of the decision forward. In inviting us to review this portion of the hearing officer's determination, the carrier cites no authority for such a proposition. In Texas Workers' Compensation Commission Appeal No. 951432, decided October 5, 1995, the hearing officer had determined that death benefits began to accrue on "January 15, 1994," the day of the deceased's death. The Appeals Panel noted that Section 408.183(a) provides that entitlement to death benefits begins on the day after the date of an employee's death. Thus, the Appeals Panel in that case reformed that hearing officer's decision to provide that death benefits began to accrue on _____.

Further, in Hartford Accident & Indem. Co. v. Crowley, 509 S.W.2d 939 (Tex. Civ. App.-Waco 1974, writ ref'd n.r.e.) the court determined that, although the carrier had previously paid full death benefits to the stepmother (and the Industrial Accident Board had approved the settlement), the carrier was liable for payment of 50% of the death benefits to the decedent's adult child. Thus, despite the fact the carrier had already paid 100% of the death benefits to the stepmother, it was found to be liable for 50% of the death benefits that should have been paid to the adult child.

In this case, the decedent died on _____ as a result of injuries he received on _____. We modify the hearing officer's decision to state, (beneficiary 2), the minor son of (decedent), deceased, is entitled to 50% of the weekly death benefits. The benefits accrued since _____ are to be paid in a lump sum with interest."

Finally, the carrier contends that the hearing officer erred in admitting evidence from other courts that had decided that beneficiary 2 was the legal beneficiary of the decedent. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.4(b) (Rule 132.4(b)) provides as follows:

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 (Emphasis added.)

We find no error in the hearing officer's inclusion of court orders establishing the paternity of beneficiary 2.

We affirm the hearing officer's decision and order as modified.

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

**RICK KNIGHT
105 DECKER COURT, SUITE 600
IRVING, TEXAS 75062.**

Roy L. Warren
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager Judge

Robert W. Potts
Appeals Judge