

APPEAL NO. 032534
FILED NOVEMBER 13, 2003

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 August 18, 2003. The hearing officer determined that the respondent (carrier) is liable for death benefits to the appellant (claimant beneficiary) from January 10 to August 14, 2002, because the carrier waived its right to dispute the claim up to the date of its disputes; that the claimant beneficiary is not an eligible spouse of the deceased, and is not a proper beneficiary; and that the Subsequent Injury Fund is the proper beneficiary of death benefits beginning August 15, 2002. The hearing officer's determination of the carrier's liability for benefits to the claimant beneficiary from January 10 to August 14, 2002, was not appealed and has become final pursuant to Section 410.169.

The claimant beneficiary asserts that the hearing officer erred in finding that she was not an eligible spouse as the hearing officer failed to address why there was no good cause found for the claimant beneficiary to abandon the deceased the year preceding the death; and that the hearing officer erred in finding that an abandonment occurred. The carrier responds and urges that the decision should be affirmed.

DECISION

Affirmed in part and reversed and remanded in part.

Essential background facts were not in dispute. The decedent was struck and killed by a car in the course and scope of his employment on _____. The decedent and the claimant beneficiary were married for 29 years before the decedent's death. The marriage was never ended by divorce, although the claimant beneficiary had filed an Original Petition for Divorce in October 1999 and at the request of the decedent, the matter was set for final hearing on the merits for March 4, 2002. The claimant beneficiary testified that she had good cause for abandoning the marriage because of the decedent's enduring cruelty and physical abuse. Alternatively, she asserted that she had not abandoned the marriage because they were attempting to reconcile in the year prior to the decedent's death. The claimant beneficiary admitted that she had not lived with the decedent at any time since filing for divorce in October 1999.

Section 408.182 controls the distribution of death benefits. An "eligible spouse" is normally entitled to death benefits and is defined as "the surviving spouse of a deceased employee unless the spouse abandoned the employee for longer than the year immediately preceding the death without good cause, as determined by the [Texas Workers' Compensation Commission]." Section 408.182(f)(3). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.3 (Rule 132.3) implements this statute and provides in part:

- (b) A surviving spouse who abandoned the employee, without good cause for more than one year immediately preceding the death, shall be ineligible to receive death benefits. The surviving spouse shall be deemed to have abandoned the employee if the surviving spouse and the employee had not been living in the same household for more than one year preceding the employee's death

The claimant beneficiary appeals the determination of the hearing officer that she abandoned her marriage to the decedent. In support of her position, she testified that the decedent provided her monetary support; that the two never finalized the divorce; that communication between the two was maintained; and that over the year preceding his death, the decedent and the claimant beneficiary were working on reconciliation. In Texas Workers' Compensation Commission Appeal No. 980142, decided March 10, 1998, the Appeal Panels observed that whether a spouse has abandoned a marriage was essentially a question of fact for the hearing officer to decide. In the case we now consider, the evidence obviously came from interested parties and was evaluated accordingly by the hearing officer. In her discussion of the evidence, it is clear that the hearing officer did not find the claimant beneficiary persuasive in her assertions that she and the decedent were working on reconciliation. In accordance with this evaluation of the evidence, she found that there was an abandonment of the marriage as set out in Rule 132.3(b). Under our standard of review of factual determinations, we perceive no valid reason to reverse that determination. See Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Unfortunately, the hearing officer made no express or implied finding that the abandonment was without good cause. Section 408.182(f)(3) requires an affirmative finding of good cause or the lack thereof in resolving the legal consequences of an abandonment. Texas Workers' Compensation Commission Appeal No. 982874 decided January 21, 1999. For this reason, we affirm the finding of an abandonment of the marriage, but reverse the determination that the claimant beneficiary was not a proper beneficiary and remand this issue for further findings of fact and conclusions of law that the abandonment was or was not in good faith, with an appropriate explanation of that finding.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JIM MALLOY
AMERICAN INTERNATIONAL GROUP
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge