

APPEAL NO. 033119  
FILED JANUARY 14, 2004

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 October 23, 2003, with the record closing on October 30, 2003. The hearing officer determined that respondent 1, the decedent's spouse, (MMV), is the only proper legal beneficiary of the decedent. The appellant, the decedent's mother, (CV), appeals this determination, asserting that MMV abandoned the decedent for more than one year prior to his death; that due to the abandonment, MMV cannot be the proper beneficiary; and that because there is no eligible spouse and because the hearing officer determined that CV was dependent upon the decedent, CV is the proper beneficiary. MMV responds and urges affirmance of the hearing officer's decision. The appeal file does not contain a response from respondent 2, the decedent's girlfriend and alleged common-law spouse, (MJV), or respondent 3 (carrier).

DECISION

Affirmed.

The pivotal disputed issue in this case is whether MMV is an "eligible spouse" within the meaning of Section 408.182 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.3 (Rule 132.3) and, more specifically, whether she abandoned the decedent for longer than one year immediately prior to his death, without good cause. It was the hearing officer's responsibility as the sole judge of the weight and credibility of the evidence under Section 410.165(a) to resolve the conflicts and inconsistencies in the testimony and evidence. The hearing officer noted that MMV and the decedent had been living separately for more than one year prior to his death, but that given the facts in the case, their living arrangement was not due to a pending breakup of the marriage. The burden of proving that MMV abandoned the decedent is on the party opposing the claim of the surviving spouse and the hearing officer found that neither CV nor MJV met this burden. Nothing in our review of the record indicates that the hearing officer's determination that MMV is the only proper legal beneficiary of the decedent is 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). As MMV is the eligible spouse, CV is not entitled to any death benefits. Section 408.182.

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Edward Vilano  
Appeals Judge