

APPEAL NO. 040332
FILED APRIL 5, 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 (CCH) 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 dispute; that the claimant beneficiary is not an eligible spouse of the deceased, and is not a proper beneficiary; and that the Subsequent Injury Fund (SIF) 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.

In Texas Workers' Compensation Commission Appeal No. 032534, decided November 13, 2003, the Appeals Panel affirmed the hearing officer's finding of an abandonment of the marriage by the claimant beneficiary but reversed the determination that the claimant beneficiary was not a proper beneficiary because the hearing officer failed to make an affirmative finding pursuant to Section 408.182(f)(3) of good cause, or lack thereof, in the abandonment of the marriage. (The claimant beneficiary alleges good cause based on abuse by the deceased.)

The hearing officer did as directed and made additional findings of facts, amended her conclusions of law, and supported her determinations. She decided that the claimant beneficiary's abandonment of her marriage to the deceased was not done in good faith and the claimant beneficiary failed to have good cause for the abandonment of the marriage. Otherwise, the hearing officer reissued her decision that the carrier is liable for the death benefits to the claimant beneficiary from January 10 to August 14, 2002; that the claimant is not an eligible spouse of the deceased; that the claimant beneficiary is not a proper legal beneficiary; and that the SIF is the proper beneficiary of death benefits beginning August 15, 2002.

The claimant beneficiary appeals on evidentiary grounds and urges reversal. The carrier responds, urging affirmance.

DECISION

Affirmed.

The issue on remand is "whether the claimant beneficiary abandoned the deceased for longer than the year immediately preceding his death without good cause, as determined by the [Texas Workers' Compensation Commission (Commission)]." Section 408.182(f)(3). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.3 (Rule 132.3) implements this statute.

The background facts and applicable law were recited in Appeal No. 032534, *supra*, and will not be repeated here. Pursuant to the remand, the hearing officer stated that upon hearing and observing the claimant beneficiary and her son, that their testimony that the deceased was abusive, that the claimant beneficiary and the deceased were in communication after the deceased's departure, and that they were trying to reconcile at the time of the deceased's death, was not credible. Her reasoning is summarized in the hearing officer's Statement of the Evidence. The claimant beneficiary asserts, referencing the transcript of the CCH, witness statements, and documents pertaining to the claimant beneficiary's divorce proceedings, that there is insufficient evidence supporting the hearing officer's determination.

A trier of fact is not required to accept testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Conflicts in the evidence were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole. The hearing officer may believe all, part, or none of the testimony of any witness (Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ)).

An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Company v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). In view of the evidence presented, we cannot conclude that the hearing officer's determination is either incorrect as a matter of law or 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).

The hearing officer's decision and order are affirmed.

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

**MR. 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