

APPEAL NO. 040630
FILED MAY 13, 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 February 17, 2004, with the record closing on February 20, 2004. The hearing officer determined that respondent (claimant beneficiary) is a proper legal beneficiary of the decedent entitling her to death benefits. The appellant (carrier) appealed, arguing that the hearing officer's determination is not supported by legally or factually sufficient evidence. The claimant beneficiary responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that on _____, the decedent sustained a compensable injury that resulted in his death. The sole issue before the hearing officer was whether the claimant beneficiary is the proper legal beneficiary entitling her to death benefits. The carrier argued at the CCH, and on appeal, that the evidence did not establish that she was the decedent's common-law spouse. Vernon's Texas Code Annotated, Family Code § 2.401(a)(2) (Rule 2.401(a)(2)) provides that in a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that the man and woman agreed to be married and after the agreement they lived together in this State as husband and wife and there represented to others that they were married.

The existence of a common-law marriage is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 961010, decided July 10, 1996. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). There was conflicting evidence on the issue of whether the decedent and the claimant beneficiary entered into a common-law marriage. Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. A review of the hearing officer's decision demonstrates that she was persuaded by the testimony and documentary evidence presented at the CCH that a common-law marriage was established. The hearing officer specifically found that on or after November 14, 1997, the decedent and the claimant beneficiary agreed to be married and after the agreement lived together in this State as husband and wife and there represented to others that they were married. The evidence sufficiently supports the hearing officer's determination that the claimant beneficiary was a proper legal beneficiary of the decedent, and that she was entitled to death benefits. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying the

standard above, we find no legal error in the hearing officer's finding that the claimant beneficiary is the proper legal beneficiary of the decedent entitling her to death benefits.

The hearing officer's decision and order are affirmed.

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

**MR. RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge