

APPEAL NO. 041860  
FILED SEPTEMBER 9, 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 July 9, 2004. The hearing officer determined that the respondents (claimant beneficiaries) were dependents of the decedent entitled to death benefits as set out in the decision and order.

The appellant (carrier) appealed, contending that the claimant beneficiaries had failed to identify the net resources to establish the existence of an economic benefit pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.2 (Rule 132.2) and that there was no (insufficient) evidence of regular or recurring payments. The claimant beneficiaries responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant beneficiaries were the parents of the decedent, that there were no other beneficiaries of the decedent, and that the decedent sustained a compensable fatal injury on \_\_\_\_\_, in a motor vehicle accident. Testimony of PS, one of the decedents brothers, and one of the claimant beneficiaries, established that the claimant beneficiaries had 11 children of which 3, the decedent, PS, and a sister, lived in the United States and that those 3 children, including the decedent, sent their parents, the claimant beneficiaries, \$900.00 every other month (with the decedent contributing \$150.00 a month or 33% of the amount), which constituted the claimant beneficiaries sole income.

Rule 132.2 (c) and (d) provides:

- (c) It shall be presumed that an economic benefit, whose value was equal to or greater than 20% of the person's net resources in the period (see subsection (d) of this section) for which the benefit was paid, is an economic benefit which contributed substantially to the person's welfare and livelihood. This presumption may be overcome by credible evidence. The burden is on the claimant to prove that benefits whose value was less than 20% of the person's net resources contributed significantly to the person's welfare and livelihood.
- (d) Net resources for the purpose of subsection (b) [sic, should refer to subsection (c)] of this section are 100% of all wage and salary income and all other income including nonpecuniary income and all income of the individual's spouse, less 100% of social security taxes and federal income tax withholding.

The carrier contends that there was no evidence what the claimant beneficiaries net resources were. We disagree. The Claimant Beneficiaries Exhibit No. 2 sets out the circumstances of the claimant beneficiaries, that they are not employed (one is 74 years old, the other is 69 and in poor health), that they have no property and own nothing of monetary value, and that the decedent, PS, and their sister in the United States are their sole support. Evidence regarding what support the other 8 children (all still residing in (Country)) may give their parents was conflicting and perhaps subject to some communication problem. In any event, that determination was a factual determination within the province of the hearing officer, as the sole judge of the relevance, materiality, weight and credibility of the evidence to resolve.

The carrier also asserts that the claimant beneficiaries failed to prove that the support provided by the decedent was “regular or recurring” (see Rule 132.2(b)) because three of the four bank transfers submitted were not sent directly to the claimant beneficiaries. However, there was testimony that the decedent, PS, and their sister sent the money in US dollars and at some time during the transfer the dollars were converted to pesos for the claimant beneficiaries. The circumstances involving the bank transfers were inconsistencies for the hearing officer to resolve. There was sufficient ambiguity in the evidence to preclude a reversal of the hearing officer’s decision.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer’s determinations are not incorrect as a matter of law 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)

We affirm the hearing officer's decision and order

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

**RICHARD A. MAYER  
11910 GREENVILLE AVENUE, SUITE 600  
DALLAS, TEXAS 75243-9332.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret L. Turner  
Appeals Judge