

APPEAL NO. 111607  
FILED DECEMBER 28, 2011

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 September 29, 2011. The hearing officer resolved the disputed issue by deciding that the appellant (claimant beneficiary) is not a proper legal beneficiary of the workers' compensation death benefits payable on account of (decedent)'s compensable fatal injury of (date of injury).

The claimant beneficiary appealed, contending that nothing in the 1989 Act distinguishes an equitable adoption from that of a statutory adoption and the hearing officer erred in deciding that the claimant beneficiary is not a proper legal beneficiary of the decedent entitled to death benefits. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Pursuant to Section 410.203(b)(3) the Appeals Panel is permitted to write an affirmance of the decision of a hearing officer in a case described in Section 410.204. Section 410.204(a) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but do not affect the outcome of the hearing. A written decision was issued in this case because, as under the facts presented, it is a case of first impression.

It was undisputed that the decedent sustained a compensable fatal injury on (date of injury), while he was in the course and scope of his employment with employer. The claimant beneficiary contended that she was a proper legal beneficiary of the workers' compensation benefits payable due to the compensable fatal injury of the decedent because a district court had decided that the claimant beneficiary had been equitably adopted by the decedent.

The claimant beneficiary's mother, (SW) testified at the CCH that the decedent was not the biological father of the claimant beneficiary although he treated her as his daughter and even exercised visitation with the claimant beneficiary when he picked up his biological son for his visitation. SW testified that she was never married to the decedent, had never lived with the decedent, and that the decedent was the father of

her son. She testified that she and the decedent had discussed his adoption of the claimant beneficiary and had approached the claimant beneficiary's biological father to request that he terminate his parental rights to allow for the decedent's adoption of the claimant beneficiary. SW acknowledged at the CCH that the claimant beneficiary's biological father refused to terminate his parental rights to allow for the adoption.

The Texas Probate Code § 3(b) defines "child" in part as including an adopted child, whether adopted by any existing or former statutory procedure or by acts of estoppel. Under the theory of equitable adoption, courts have recognized a right of intestate succession for children who are neither the natural children nor the legally adopted children of the deceased. See Heien v. Crabtree, 369 S.W.2d 28 (Tex. 1963). The court in Heien, after discussing several cases, went on to state the courts did not intend to hold, and did not hold, that "equitable adoption" or "adoption by estoppel" is the same as legal adoption or that it has all of the legal consequences of a statutory adoption.

In evidence was a Judgment Declaring Heirship and Heirship by Equitable Adoption. The district court's Judgment recites that "the evidence presented and admitted fully and satisfactorily proves each and every issue of heirship and equitable adoption of [claimant beneficiary] by the [decedent]." The Judgment went on to "declare and decree and adjudge" that the claimant beneficiary was equitably adopted by the decedent and is a joint heir with the son of the decedent.

Although the courts have recognized adoption by estoppel, the courts have held that adoption by estoppel is inapplicable to many situations. In Amos v. Central Freight Lines, Inc., 575 S.W.2d 636, 638 (Civ.App.-Houston [1st Dist.] 1978, no writ), the court held that an equitably adopted child is not entitled to maintain a suit for the wrongful death of his or her adopted parent, since the cause of action is purely statutory and does not inure to the benefit of the children by reason of inheritance. The court noted in Amos, that as in the case with workman's compensation benefits, the right to recover death benefits [under the Wrongful Death Act] is not obtained through inheritance but is conferred by statute. Additionally, the court held in Griffith v. Christian, 564 S.W.2d 170 (Tex.Civ.App.-Tyler 1978, no writ) that rights to workers' compensation benefits are not obtained through inheritance but are conferred by statute.

Section 408.181(a) provides that an insurance carrier shall pay death benefits to the legal beneficiary if a compensable injury to the employee results in death. "Child" is defined for purposes of workers' compensation in Section 401.011(7) as a son or daughter and the term includes an adopted child or a stepchild who is a dependent of the employee. The 1989 Act does not provide of the payment of death benefits to a child who has been equitably adopted. We affirm the hearing officer's determination

that the claimant beneficiary is not a proper legal beneficiary of the workers' compensation death benefits payable on account of the decedent's compensable fatal injury of (date of injury).

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge