

APPEAL NO. 92107

On February 20, 1992, a contested case hearing was held. The hearing was held to determine the legal beneficiaries of the deceased, (DJ) for payment of death benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). The hearing officer determined that the deceased was survived by a wife, (Ms. H), and a minor daughter, (MKC), respondents herein, and decided they were entitled to the death benefits. He also determined that J. L. and (SJ), appellants herein, were not surviving dependent parents of the deceased entitled to contingent death benefit status.

Appellants contend that there is no evidence to support certain findings of fact and conclusions of law made by the hearing officer which support his decision in favor of (Ms. H) and (MKC). Appellants also contend that the "overwhelming evidence" establishes that the deceased made substantial contributions to their welfare on a regular basis, and that there is no evidence to support the hearing officer's conclusion that they are not surviving dependent parents entitled to contingent death benefit status. In addition, appellants contend that there is no evidence to support the hearing officer's decision awarding death benefits to (Ms. H) and (MKC), and denying death benefits to appellants. No responses were filed to the appellants' request for review.

DECISION

The decision of the hearing officer is affirmed.

When reviewing a no evidence point of error, we examine the record for evidence that supports the finding while ignoring all evidence to the contrary. See INA of Texas v. Howeth, 755 S.W.2d 534, 537 (Tex. App.-Houston [1st Dist.] 1988, no writ). When reviewing a question of the sufficiency of the evidence, we consider and weigh all of the evidence in the case and set aside the decision if we conclude that the decision is so against the great weight and preponderance of the evidence as to be manifestly unjust. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660, 661 (1951). See also Texas Workers' Compensation Commission Appeal No. 92069 (Docket No. DA-A-137287-01-CC-DA41) decided April 1, 1992.

In a contested case hearing held under Article 6 of the 1989 Act, the hearing officer is the trier of fact, and is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given the evidence. Article 8308-6.34(e) and (g). When presented with conflicting evidence, the trier of fact may believe one witness and disbelieve others, and may resolve inconsistencies in the testimony of any witness. R. J. McGalliard v. Kulmun, 722 S.W.2d 694, 697 (Tex. 1987).

A "death benefit" means a payment made to a legal beneficiary for the death of an employee under the 1989 Act, and a "legal beneficiary" means a person who is entitled to receive death benefits under the 1989 Act. Article 8308-1.03(13) and (31). The insurance

carrier must pay death benefits to the legal beneficiaries of the employee if the compensable injury results in death. Article 8308-4.41. Death benefits are paid in accordance with the provisions of Article 8308-4.42. Subsections (d), (e), (f), and (g) of Article 8308-4.42 provide as follows:

- (d) If there is an eligible child or grandchild and an eligible spouse, half of the death benefits shall be paid to the eligible spouse and half shall be paid in equal shares to the eligible children. If an eligible child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.
- (e) If the employee is not survived by an eligible spouse, child, or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, stepparent, sibling, or grandparent of the deceased. If more than one of those dependents survives the deceased, the death benefits shall be divided among them in equal shares.
- (f) If the employee is not survived by legal beneficiaries, the death benefits shall be paid to the subsequent injury fund under Section 2.26 of the Act.
- (g) For the purposes of this section:
 - (1) "Eligible spouse" means the surviving spouse of the deceased employee unless the spouse abandoned the employee for more than one year immediately preceding the death without good cause, as determined by the commission.
 - (2) "Eligible child" means a child of the deceased employee if the child is:
 - (A) a minor; . . .

If a legal beneficiary dies or otherwise becomes ineligible for death benefits, benefits are redistributed to the remaining legal beneficiaries in accordance with Articles 8308-4.42 and 8308-4.43. See Article 8308-4.44.

The Texas Workers' Compensation Commission has adopted rules relating to death benefits. See Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE, 132.1-132.12. Pertinent provisions of several of those rules are as follow:

Rule 132.3: Eligibility of Spouse to Receive Death Benefits

- (a) The surviving spouse is entitled to receive death benefits, unless subsection (b) of this section applies. The surviving spouse shall submit a certified copy of the marriage license, or satisfactory evidence of common-law marriage to the deceased employee, to the insurance company.
- (b) A surviving spouse who abandoned the employee, without good cause for more than one year immediately preceding the death, shall be ineligible to receive death benefits. The surviving spouse shall be deemed to have abandoned the employee if the surviving spouse and the employee had not been living in the same household for more than one year preceding the employee's death unless the spouse is:
 - (1) hospitalized;
 - (2) in a nursing home; or
 - (3) living apart due to career choices, military duty, or other reasons where it is established their separation is not due to the pending break-up of the marriage. The burden is on a person who opposes the claim of a surviving spouse to prove the spouse abandoned the deceased employee.

Rule 132.4: Eligibility of a Child to Receive Death Benefits

- (a) A child eligible for death benefits is the son or daughter of a deceased employee, including an adoptive child, and including a dependent stepchild, who meets any of the conditions set out in the Texas Workers' Compensation Act (the Act), Sec. 4.42(g)(2).

Rule 132.7: Eligibility of Other Surviving Dependents to Receive Death Benefits

- (a) A parent, stepparent, sibling, or grandparent of a deceased employee who was dependent on the employee on the day of death is entitled to receive death benefits, only if there is no eligible spouse, child, or grandchild.

Rule 132.2: Determination of Facts of Dependent Status

- (c) It shall be presumed that an economic benefit, whose value was equal 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.

Rule 132.12: Redistribution of Death Benefits

- (a) Death benefits shall be redistributed if a legal beneficiary dies or becomes ineligible to receive benefits. The benefits shall be redistributed to the remaining legal beneficiaries eligible to receive death benefits at the time of death of the employee.

The parties stipulated that the deceased was fatally injured on _____, while acting in the course and scope of his employment with his employer, and that the carrier in this case was the workers' compensation insurance carrier for the employer on that date. The deceased was 26 years of age at the time of his death. The carrier admitted liability for death benefits and asked the Commission to determine who the legal beneficiaries are for the purpose of payment of death benefits. Although no arguments were made at the hearing concerning eligibility for death benefits, we gather from the posture of the parties and the evidence adduced at the hearing that (Ms. H) claimed to be an eligible surviving spouse of the deceased, that (Ms. H) on behalf of (MKC) (hereafter MKC) claimed that MKC is an eligible child of the deceased, and that J. L. and SJ (hereafter sometimes referred to as the parents) claimed to be surviving dependent parents of the deceased and also contested the claims of (Ms. H) and MKC.

(Ms. H) and MKC were not represented by an attorney at the hearing. (Ms. H) testified as follows. On December 31, 1986, when she was 14 years of age, she and the deceased were married by a justice of the peace in the courthouse in (City 1), Texas. A marriage certificate was not introduced into evidence. They were never divorced. (Ms. H) is her maiden name. At times she uses her maiden name and at other times she uses the deceased's surname. They lived with the deceased's parents for two weeks before their marriage and for two weeks after their marriage. The deceased then got a job in (City 1), Texas, where Ms. H's mother lived, and they lived with her mother for three months. The deceased, who was a member of the Army Reserves, then left for training in (City 2) for 12 weeks. While away at training, the deceased would call Ms. H every other day and would send her money. Ms. H sometimes worked as a babysitter at night. One morning during the eighth week he was away, the deceased called her and asked where she had been. When she told him she had been babysitting, the deceased said he did not believe her and

that he thought she had been out with someone. She told him she had not. The next week, the deceased called her and said his parents were coming to get his belongings and that "that was it." The next day, the deceased's parents picked up his clothes, wedding ring, and "everything," including the dog. This occurred about the second week of June 1987. When the deceased returned from training on June 21, 1987, he took Ms. H from her mother's house to his parents' house. The deceased's parents and sister got really upset and told the deceased he had to get her out of the house. The deceased and Ms. H then went and stayed at a friend's house for four days. It was during this time that MKC was conceived. It was also during this time that they decided that the deceased would live with his parents in (City 3), Texas, and that Ms. H would live with her mother in (City 1), Texas. They decided on this arrangement because the deceased could earn \$100 per week working for his father's trash company, but she was not welcome at his parents' house. When Ms. H found out she was pregnant on August 1, 1987, she called the deceased and he came and stayed with her at her mother's house for about two weeks. He then returned to his parents' house to help them. After that, the deceased would visit her for about one week every month to make sure she didn't need anything and to help pay for her vitamins and other things.

Ms. H and Mrs. C worked together at a nursing home. During the summer of 1987, Ms. H and her mother invited Mr. and Mrs. C to a barbecue and that is when Ms. H met Mr. C. The C became Ms. H's Lamaze coaches. Since Mrs. C had to work during most of the times when the Lamaze classes were given at the hospital, Mr. C would go to the classes with Ms. H.

MKC was born on March 14, 1988, at (Hospital) in (City 4), Texas. After MKC was born, Ms. H called the deceased and he visited her in the hospital the day of the birth and the next day. At the hospital, Ms. H and the deceased discussed MKC's surname. They decided to give MKC a friend's surname, as opposed to the deceased's surname because of all the problems they had had with the deceased's parents. In Ms. H's words "I didn't want no fighting with his family after I went up there with him in June and they told us to get off their property and not to come back. They didn't want him back unless he was without me. I didn't want to fight and I sure didn't want them to try and take my daughter." Ms. H was 15 at that time. They decided to give MKC the "C" surname "out of respect" for her Lamaze coaches. Mr. C was said to have agreed to this. Nothing was said as to Mrs. C's opinion on the matter. Also, no inquiry was made as to why MKC could not have been given Ms. H's maiden surname. Mr. C was with Ms. H at the hospital while she was in labor and waited with her until the deceased arrived.

According to Ms. H the deceased drove to (City 1) every month to give her money and he helped support MKC on "numerous occasions" by giving Ms. H's mother money to buy diapers, food, and clothes for the baby. She never attempted to get the deceased to pay child support because he gave her money willingly. The deceased told her that his father knew about MKC and wished that the deceased would get custody of her. Ms. H

also said that she and the deceased had been together off and on since they separated. She said that the last time she saw the deceased was around Christmas of 1990 when he stopped by and gave her \$25 to buy MKC a Christmas gift. She testified that it was not possible for a man other than the deceased to be the father of MKC, and that Mr. C is not the father of MKC. Ms. H further stated that she "didn't see another man until about a year and a half ago." Since the hearing was held in February 1992, the time Ms. H testified to would be about September 1990, which would be about two and a half years after the birth of MKC and about six months before decedent's fatal accident. Ms. H also testified that from April 1989 to "the first of 1990" she lived in (State 2). According to Ms. H, Mr. C now lives in (State 2). Ms. H has a second child born in October 1991. he said she is not married now, but lives with the father of her second child, a Mr. O.

A Notice Of Fatal Injury Or Occupational Disease and Claim For Compensation For Death Benefits dated November 25, 1991, was introduced into evidence by Ms. H. The notice is signed "T H. J," and lists "H, T K." as the deceased's spouse and lists MKC as a child of their marriage. The notice notes that Ms. H and the deceased had been separated for three years, that they were not living together during the year before the deceased's death, and that the reason they were not living together was "we could not work out family problem so we lived apart." Medical records introduced into evidence by Ms. H record the birth of MKC on March 14, 1988. Throughout the medical records the name of the patient and mother is noted as "T J" or "T K. J." On top of the Immediate Newborn Evaluation form the name "J" precedes the words "baby girl," but has a line through it, and the handwritten name "C" is placed above it. The Hospital Discharge Summary also refers to "Baby girl C." The hospital forms do not contain a place for indicating the father's name and no person is listed as the father on the forms. Ms. H also introduced into evidence what appears to be an uncertified copy of a registration of the birth of MKC. The top portion of the document where the title of the document would ordinarily appear was not copied. This document records the live birth of "(MC)" on March 14, 1988, at (Hospital) in (City 4), Texas, and lists the maiden name of the mother as "(Ms. H)," age 15, and the informant as "T J. J." The place for the father's name is left blank.

BD, the deceased's sister, testified for their parents. She said that she believed the deceased and Ms. H were married in December 1986, and that to her knowledge they were never divorced. She stated that the deceased and Ms. H lived in (City 1) for a couple of months and then the deceased went to (City 2) due to the service. She understood that the deceased got a "Dear John" letter, came home, and found that Ms. H was with another man. She could not recall if the deceased and Ms. H got together again after that. When asked if she knew anything about a child of the marriage she said "We did not even know about a child. We heard she had one, but she did not identify it of being (deceased's). She didn't let nobody know."

Concerning the deceased's support of their parents, Ms. BD testified that her father is disabled and unemployed and that her mother is unable to get work. She said a doctor

wrote a letter in 1985 for the purpose of getting the deceased home from the service in order to help out their parents. A copy of the letter dated May 8, 1985, was in evidence. Dr. S stated in it that the deceased's father and mother are both disabled and need him to come home to help with their income. Ms. BD stated that when the deceased came home from the service, she saw him cut wood, sell it, and give the money to their parents. She didn't know how many times this occurred. She further testified that her parents ran a trash company for about eight years and that she became the owner of the company in 1990. She indicated that her father had been forced to work from time to time as a driver of one of the trash trucks in order to make a living because he had been turned down for Social Security disability benefits. Ms. BD further testified that her parents had lived with her in her trailer home for about two and a half years. During that time she has made all the payments on the trailer home and paid for all the utilities. Since buying the trash company in October 1990, she said she has been able to give her parents money. She said that she started paying for all of her parents' groceries about a year after they moved into her home. Before that, she said the deceased and another brother would help pay for groceries. Ms. BD could not recall the amount the deceased had contributed for groceries. She said he lived in a little camper in back of her trailer home and would pay for most of the "stuff that was going in because he was out there too and he would eat too." She stated that the deceased would buy his cigarettes and then would give their parents a little bit that was left out of his paycheck each week. Ms. BD also said that she now pays for all of their parents' medication, groceries, utilities, and clothing. When asked whether the deceased essentially provided the means of support for their parents, Ms. BD said "partly."

J. L. J testified that he is the father of the deceased. He knew that the deceased and Ms. H were married and, as far as he knew, they were never divorced. He said that the deceased never lived with Ms. H "out at their place." He said that the deceased did not tell him he, the deceased, had a daughter by the name of (MC), and that he did not know about the child until these proceedings started. He also said that Ms. H called him one time and told him she had heard that his wife wanted a picture of the baby. He said he told her that it would be okay if his wife wanted the picture. He did not say when this call occurred. Concerning their dependency on the deceased, Mr. J testified that he has had three operations on his back for an injury he sustained in 1974 and that he is unable to hold down a full-time job. He said he occasionally does odd jobs and helps his daughter with the trash company by driving a truck now and then. He also testified that his daughter has paid for the trailer home, the utilities, and their clothes since he and his wife started living with her. According to the daughter, her parents have been living with her for the last two and a half years. He said that from 1985 until the deceased's death, the deceased gave him and his wife money. He said that when the deceased was in the service he would send them a little bit of money once a month. When the deceased came home from the service he helped them with their trash company and had another job. He said the deceased would help with the groceries, cigarettes, and medical expenses. Mr. J was unable to estimate the amount of support the deceased provided to him and his wife during 1990. He said the deceased would either buy groceries or give his mother money to buy

groceries. He did not say how often this occurred. He also said that their daughter and the deceased provided most of their support. When asked whether their daughter and the deceased helped them out about 50-50, Mr. J said "Yes, they did the best they could. One time (the deceased) would have a little more than BD and vice versa."

SJ testified that she is the natural mother of the deceased and is the wife of J. L. J. She said that she had never heard about MKC until the workers' compensation proceedings started and that she had never seen MKC until the hearing. She also said that the deceased never told her that MKC was his daughter. She testified that she had never had any conversations with Ms. H, but acknowledged she called Ms. H's mother "after this came up" and asked her about the child. She said Ms. H's mother told her the child's name was "MK," but did not know the child's last name. She said that the deceased never told anyone he had a daughter because he did not know he had a daughter. She introduced into evidence a Certification of Vital Record issued by the County Clerk of (County), Texas, on October 18, 1991. The document is an abstract of birth facts provided to the county clerk's office by the Texas Department of Health, Bureau of Vital Statistics, from a document in that department's custody. The document was filed on April 20, 1988, and records that "(MC)" was born on March 14, 1988, in (County), Texas. It also records the mother's name as "T K H," but leaves the father's name blank.

Concerning her and her husband's dependency on the deceased, Mrs. J testified that the deceased helped them out with the trash company when they owned it and that they could not have made it without the help of the deceased and their daughter. She said that the deceased worked on the trucks and that when he died they did not have any help. She also said that the deceased gave them money and bought groceries, but could not say how much he contributed to their support because he always gave cash and no records were kept concerning the amount of his support. She further testified that their daughter and the deceased "pretty well equaled it out," and that now that the deceased is not able to help them it is all on their daughter to help them.

Four affidavits were introduced into evidence by the deceased's parents. One affiant stated she saw the deceased give his parents money on numerous occasions to help them with their support, and that the deceased was their only provider of money and support until his death. A second affiant stated that he saw money being accepted by the deceased's parents for their support and well being. A third affiant stated that he saw the deceased hand money to his parents on different occasions to help them support themselves and that the deceased's parents had no other money except what BD gave them. The fourth affiant stated that the deceased helped his parents with monetary support weekly, or when he got paid, that the deceased's parents were and still remain indigent and without means of monetary support, and that she saw the deceased hand money to his parents on many occasions.

JN, the carrier's claim representative, testified that the carrier's investigation as to

who is entitled to death benefits was inconclusive. He also stated that the carrier was unsuccessful in its attempt to find a divorce decree relating to the marriage of the deceased and Ms. H. Three investigative reports were introduced into evidence.

The parents of the deceased have not contested the hearing officer's findings that Ms. H and the deceased were married in a ceremonial marriage on December 31, 1986, and that they were never divorced. The parents do contend that there is no evidence to support certain findings and conclusions of the hearing officer relating to the eligibility of Ms. H and MKC to receive death benefits. The substance of the challenged findings and conclusions is as follows:

- Finding 7.** Ms. H did not cause the deceased to leave their marriage.
- Finding 8.** Ms. H did not abandon the deceased.
- Finding 11.** Ms. H and the deceased conceived a child shortly after June 21, 1987.
- Finding 12.** Four or five days after June 21, 1987, out of economic necessity and to avoid family problems, the deceased returned to his family's business and Ms. H returned to stay with her mother. The circumstances that existed at the time constituted good cause for their separation.
- Finding 13.** After their marriage and before the birth of MKC, Ms. H had not been intimate with anyone other than the deceased.
- Finding 14.** A daughter was born to the deceased and Ms. H on March 14, 1988, and they named her (MC) to avoid more problems with the deceased's parents.
- Finding 15.** The deceased was present at the hospital after the birth of his daughter.
- Finding 16.** The deceased regularly visited MKC and Ms. H and regularly gave Ms. H or her mother money for MKC's benefit.
- Finding 17.** That around Christmas 1990, the deceased visited Ms.

H and gave her money to buy a present for MKC.

Finding 20. The Notice of Fatal Injury and Claim for Compensation signed by TJ is a claim for benefits for both (Ms. H) and MKC.

Conclusion 4. On _____, Ms. H was the surviving spouse of the deceased.

Conclusion 5. Ms. H, although living apart from the deceased intermittently for more than one year prior to his death, is eligible for the deceased's death benefits because she had not abandoned the deceased, had not caused them to live apart, had not asked the deceased to leave, their separation was a result of family problems and not due to the pending break-up of the marriage, and she had properly filed a claim for benefits.

Conclusion 6. MKC is a child eligible to receive the deceased's death benefits because she is the deceased's minor daughter and the Claim for Compensation filed by her mother inured to her benefit.

As previously noted, when reviewing a no evidence point of error, we examine the record for evidence that supports the finding while ignoring all evidence to the contrary. Howeth, *supra*. In our opinion, Ms. H's testimony was some evidence of probative value which supported the challenged findings of fact and conclusions of law. We overrule appellants' no evidence challenge to the aforementioned findings and conclusions.

Pursuant to Rule 132.3(b)(3) the burden is on the person who opposes the claim of a surviving spouse to prove the spouse abandoned the deceased employee. Ms. H testified that she was living apart from the deceased because of his parents ill will toward her and because of the deceased's job with his parents' or sister's trash company. She also testified to the frequent visits made by the deceased to see her and MKC. This was some evidence that their separation was not due to the pending break-up of their marriage. See Rule 132.3(b)(3). In Liberty Mutual Insurance Company v. Woods, 640 S.W.2d 714 (Tex. Civ. App.-Houston [1st Dist.] 1982, no writ), the court stated that:

"Abandonment in legal significance is the act of one spouse voluntarily separating from the other, with the intention of not returning to live together as husband and wife, that continues for the length of time required by statute. Such separation can not be caused, pursued, or consented to by the nonabandoning party."

It has been held that the mere separation of the spouses for the required period of time does not constitute an abandonment and such fact does not necessarily lead to the conclusion that there was the intention of abandonment. Jackson v. Jackson, 470 S.W.2d 276, 278 (Tex. Civ. App.-Fort Worth 1971, writ ref'd n.r.e.). See also Associated Employers Lloyds v. Wiggins, 208 S.W.2d 705 (Tex. Civ. App.-Fort Worth 1948, writ ref'd n.r.e.).

As previously mentioned, appellants do not contest the findings that Ms. H and the deceased were married in 1986 and were never divorced. We note that the law is well settled that a child born during marriage is presumed to be the legitimate child of the husband and wife. Thompson v. Thompson, 572 S.W.2d 761 (Tex. Civ. App.-Tyler 1978, no writ). Of course, that presumption may be rebutted. Davis v. Davis, 521 S.W.2d 603 (Tex. 1975). In our opinion, the presumption of legitimacy was not rebutted in this case.

Although our decision overruling appellant's no evidence challenge to the hearing officer's conclusions regarding the eligibility of Ms. H and MKC to receive death benefits disposes of appellant's claim of eligibility for current death benefits under Rule 132.7(a) (a parent who was dependent on the employee is entitled to death benefits only if there is no eligible spouse, child, or grandchild), we review their contentions regarding findings and conclusions on the issue of their dependency on the deceased in the event of a redistribution of benefits under Article 8308-4.44.

Appellants contend that there is no evidence to support Finding of Fact No. 18 and Conclusions of Law Nos. 7, 8, and 9, and that the overwhelming evidence is contrary to Finding of Fact No. 19. The substance of those findings and conclusions is as follows:

- Finding 18.** The deceased from time-to-time gave his parents some cash money, but such contributions were in an undetermined amount and at undetermined intervals.
- Finding 19.** The credible evidence does not reflect that the deceased contributed to the support of his parents on a regular basis or that his actual contributions were a substantial contribution to the welfare of his parents.
- Conclusion 7.** On _____, J. L. and SJ were not surviving dependent parents entitled to contingent death benefit status because they failed to prove their dependency as required by the 1989 Act and Commission rules.

Conclusion 8. The Subsequent Injury Fund will be entitled to the decedent's death benefits only if Ms. H and MKC prematurely cease to be eligible for such benefits.

Conclusion 9. Carrier is liable for the payment of decedent's death benefits to the beneficiaries named above herein. (Conclusion 5 was that Ms. H was eligible and Conclusion 6 was that MKC was eligible).

In our opinion, there is some evidence of probative value to support Findings of Fact No. 18 and Conclusions of Law Nos. 7, 8, and 9. We overrule appellants' no evidence challenge to those findings and conclusions. It is also our opinion that Finding of Fact No. 19 is not so against the great weight and preponderance of the evidence as to be manifestly unjust. Although there is evidence that the deceased contributed to the support of his parents, the amount, frequency, and materiality of such support is left mostly to conjecture. Based on the evidence presented, the hearing officer was not compelled to find that the economic benefit flowing from the deceased to his parents was equal to or greater than 20 percent of the parents net resources given the scant information bearing on the matter of their net resources. Thus, the presumption that the economic benefit contributed substantially to the parents' welfare and livelihood provided for in Rule 132.2(c) would not apply. In the absence of that presumption, the burden was on the parents to prove that the benefits provided by the deceased contributed significantly to their welfare and livelihood. Rule 132.2(c). From the evidence presented, we believe the hearing officer could reasonably infer that the parents' daughter provided the vast majority of their support, that the deceased did not contribute significantly to the parents' welfare and livelihood, and conclude that the parents were not dependent on the deceased.

We note that it would have been better for the hearing officer to have referred in Conclusion of Law No. 8 to the applicable provisions of Article 8308-4.43 concerning the duration of death benefits instead of using the phrase "prematurely cease to be eligible for such benefits."

The hearing officer's decision is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge