

## APPEAL NO. 950279

This matter is brought 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 January 20, 1995, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the hearing were the determination of eligible beneficiaries of the deceased; whether the carrier should pay death benefits to the subsequent injury fund (SIF) pursuant to Section 408.184(c); and what was the deceased's average weekly wage (AWW). The hearing officer determined that the decedent was survived by his mother, father and sister, none of whom were dependent on the decedent at the time of his injury or death and that his AWW was \$42.31. The carrier was ordered to pay death benefits to the SIF. On February 24, 1995, the decedent's mother sought review of this decision arguing that she and her husband never had notice of the CCH. She contended that had they known, they would have attended and asserted a claim that death benefits be paid to the family and that the deceased was regularly sending money to his sister, a student in (City). The carrier replies that it was aware that the deceased had parents and a sister still living, but believed they were not dependents of the decedent. It asks that the decision and order of the hearing officer be affirmed.

### DECISION

We affirm.

The claimant worked for the (employer) as a cowboy on an irregular basis. He died on (date), when life support systems were withdrawn, from injuries sustained in the course and scope of his employment on (date of injury). The case was heard pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.5(b)(2) (Rule 142.5(b)(2)) without a prior benefit review conference. (Mr. E), who described himself as affiliated with a part owner of the ranch, testified by phone that to his knowledge the claimant was not married and had no children. He also stated that the claimant's father was the day to day ranch manager and as far as Mr. E knew, the father knew of the decedent's injury and death. The carrier's attorney at the CCH also made representations that the carrier investigated and found no potential beneficiaries.

Section 408.182 provides that in the absence of a spouse, children or grandchildren, benefits are to be paid to parents or siblings who are "surviving dependents of the deceased." A "dependent" is further defined as "an individual who receives a regular or recurring economic benefit that contributes substantially to the individual's welfare and livelihood. . . ." Section 401.011(14). Claims for death benefits must be filed with the Texas Workers' Compensation Commission (Commission) "not later than the first anniversary of the date of the employee's death" unless the claimant is a minor or "good cause exists for the failure to file a claim under this section." Section 409.007(b).

It has not been alleged that the deceased's sister is a minor and therefor a necessary party to the CCH. See Texas Workers' Compensation Commission Appeal No. 94684,

decided July 1, 1994. Our review is limited in these cases to appeals by parties to the dispute. Section 410.202(a). There is no evidence that the parents and sister ever became parties to this dispute by virtue of filing a claim with the Commission based on dependency status. For these reasons, we decline to reverse and remand this case to the hearing officer for further proceedings on the record as it now exists. Although more than a year has elapsed from the date of death, the parents and sisters may wish to fill a claim and become parties. To be successful they must prove they are dependents of the claimant and have good cause for not timely filing a claim within one year of the death of the decedent. We offer no opinion on the likely success of such a claim.

The decision and order of the hearing officer are affirmed.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Gary L. Kilgore  
Appeals Judge