

APPEAL NO. 951432

On July 27, 1995, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The parties stipulated that (JP), the deceased, was fatally injured in the course and scope of his employment and that he died on (date of injury). The issues at the hearing were whether (OP) is the surviving spouse of the deceased and who are the legal beneficiaries of the deceased. The hearing officer decided that (OP) is the surviving spouse of the deceased and is entitled to death benefits. The hearing officer further decided that the following minor children are beneficiaries of the deceased and are entitled to death benefits: (CP), (EP), (AP), (EP), (JP), (MP), (YP), (JJ) (JP), (OP), and (CP). The appellant (carrier) does not contest the hearing officer's decision as to who the beneficiaries of the deceased are, but requests that we reform the hearing officer's decision to reflect that death benefits began to accrue the day after the deceased's death and that, as beneficiaries lose their eligibility for death benefits, death benefits will be redistributed as provided by Sections 408.182 and 408.183.

DECISION

As reformed herein, the hearing officer's decision and order are affirmed.

The hearing officer decided that death benefits began to accrue on "(date of injury)," the day of the deceased's death. Section 408.183(a) provides that entitlement to death benefits begins on the day after the date of an employee's death. Thus, we reform the hearing officer's decision to provide that death benefits began to accrue on January 16, 1994.

The hearing officer also decided that, as the beneficiaries lose their eligibility for death benefit payments, their shares of the weekly death benefit will be redistributed among the beneficiaries who remain eligible. The carrier believes that this language indicates that redistribution would go to remaining beneficiaries for life. We disagree with the carrier's interpretation, but for the sake of clarity we reform the hearing officer's decision to provide that any redistribution of death benefits shall be in accordance with Section 408.184, which is the section of the 1989 Act which pertains to the redistribution of death benefits.

As reformed, the hearing officer's decision and order are affirmed.

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Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge