

## APPEAL NO. 960574

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 January 6, 1996. The issues at the CCH were whether (deceased) death was a result of a compensable injury and whether (BB) was entitled to death benefits under the 1989 Act as the deceased's common-law spouse. There was no issue that (NF) was the minor child of the deceased and she was found to be entitled to benefits. The hearing officer determined that the deceased's death on February 6, 1995, was a direct result of the compensable injury of \_\_\_\_\_, and that BB was the common-law spouse of the deceased and entitled to benefits. The appellant (carrier) appeals urging that the findings that the injury was a direct result of the earlier compensable injury and that BB was the common-law wife of the deceased and entitled to benefits were so against the great weight and preponderance of the evidence as to be manifestly erroneous and unjust. The respondents urge that there is sufficient evidence to support the determinations of the hearing officer and ask that the decision be affirmed.

### DECISION

Not concluding the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, we affirm.

Not disputed was the fact that the deceased sustained a compensable back injury on \_\_\_\_\_, and subsequently underwent multiple surgeries. Unfortunately, and as a result of surgery, he developed a wound infection with staphylococcus aurea and was subsequently under treatment for this condition by Dr. McB. Dr. B was apparently the primary physician and treated the deceased for his back injury. In any event, it was established that the deceased was frequently in severe pain (Dr. McB testified on the deceased's severe pain and built-up tolerance to pain medication) and that he had been prescribed a number of medications for pain, the infection and related conditions. The evidence was somewhat confusing regarding his various medications and prescriptions; however, in a discharge summary from the (Medical Center) dated January 30, 1995, there is an indication that the deceased was prescribed Methadone, Prilosec, Rifadin and Disloxacillin and was "told to stop both the Xanax and the Lorcet and the Soma." In a letter from Dr. B dated June 5, 1995, the following is provided: "On 2-01-95 [deceased] obtained a refill on Xanax, Lorcet, Soma, and Prilosec. He was given 28 pills of each of these to be taken no more than 4 times a day. Each was a week's supply. He called and requested these medicines even though he was told to discontinue these medicines." In a July 5, 1995, letter, Dr. B states, "[a]s I mentioned, he (deceased) was on Xanax, Lorcet, Soma and Prilosec. I discontinued all the other medicines."

According to the testimony of BB, the deceased was frequently in severe pain, could not stand at times, and would sometimes cry because of the pain. She stated that he woke

up the night of February 5, 1995, in pain and took pain medication. She stated that it did not appear to her that the deceased took an excessive amount of the drugs. She testified that she slept on the couch the rest of the night and when she went in the next morning the deceased was dead. An autopsy report showed that the manner of death was "accidental" and that the claimant died as the result of a "mixed drug overdose" (unclear as to whether this referred to the combination of drugs taken or whether any specific drug or drugs were taken in fatally excessive amounts). The toxicology report showed that seven different drugs were found in the deceased's blood. There was no indication of any alcohol or "illegal" drugs in his system. According to the testimony of Dr. McB, all but one of the drugs was prescribed for the claimant, and the one that was not, acetaminophen, is the chemical name of a common analgesic known as Tylenol. The various drugs that had been prescribed at various times for the deceased were for muscle relaxers, pain relief and nausea (there was evidence suggesting that the deceased would occasionally vomit up drugs he took and would take more).

The hearing officer acknowledged in his discussion of the case that there was evidence to suggest that the claimant may have taken medication prescribed for someone else and that he had been told to discontinue some medications. However, he determined that the preponderance of the evidence before him reflected that the deceased died as a result of overdose of mixed drugs prescribed for the treatment of his compensable injury of \_\_\_\_\_, including the infection. He found that the drugs which caused the death of the deceased were prescribed as a result of the compensable injury and concluded that death benefits were payable. Clearly, there was a degree of conflict and inconsistency in the evidence before him. However, resolving such is the responsibility of the hearing officer. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In doing so, the provisions of Section 410.165(a) make clear that the hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Only were we to conclude, which we do not here, that his determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb his decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. While we recognize that inferences different from those found most reasonable by the hearing officer find some support in the evidence, this is not a sound basis to set aside the hearing officer's determination. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). As the hearing officer indicated in his Decision and Order, there was evidence to "suggest" that the deceased was to discontinue several medications. However, from the various statements of Dr. B set out above, there is a degree of confusion over the medications prescribed at any given time. What is clear is that the deceased was under severe pain and had been prescribed a number of medications to treat this pain which emanated from his back injury, the multiple surgeries undertaken to treat the injury, and an

ensuring infection. Aggravation of the primary injury or exacerbation of the condition as a result of medical or surgical treatment is compensable. See *generally* Vol. 1, LARSON'S WORKMEN'S COMPENSATION LAW, 13.21(a) (1995). We have previously stated that benefits, including death benefits, are payable for a condition brought about by reasonable or necessary medical treatment for a work-related injury. Texas Workers' Compensation Commission Appeal No. 93612, decided September 3, 1992. However, where the fact finder determines that a claimant refuses or fails to comply with the doctor's treatment instructions resulting in the aggravation or exacerbation of the condition, a causal connection has become attenuated and benefits are properly denied. Texas Workers' Compensation Commission Appeal No. 94257, decided April 18, 1994.

Carrier cites Texas Workers' Compensation Commission Appeal No. 93612, decided September 3, 1993, in urging reversal in that the deceased did not die as a result of medical treatment for a work-related injury, rather, that the preponderance of the evidence showed that the death resulted from the deceased's failure to comply with doctor's instructions. While we do not retreat from or modify our previous holdings that the refusal or failure to comply with the doctors' treatment instructions can break the causal connection chain, we do not find Appeal No. 93612 dispositive of this case. In Appeal 93612, the issue was whether the carrier was liable for costs of the claimant's entering a methadone treatment program based upon a claimed addiction brought on from pain killers taken for a compensable injury. In holding that the claimant failed to prove the necessary causal connection between the methadone treatment program and his compensable injury, it was noted that the claimant had a history of drug addiction prior to any compensable injury in issue, that he had a history of missing treatment appointments and changing doctors, and that there was no evidence of a prescribed dosage and his usage of the drug in question, Tylenol #4. The Appeals Panel concluded that the evidence did not support a determination that the claimant's condition was brought about by reasonable or necessary medical treatment for a work-related injury and that the carrier was not liable for the methadone treatment program. In the case under consideration, the hearing officer was convinced by a preponderance of the evidence that the deceased died from a mixed drug overdose from drugs prescribed as a result of the compensable injury. As we indicated, we cannot conclude that his determination was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust.

Carrier also appeals the determination that BB was the common-law wife of the deceased at the time of his death. BB testified that she and the deceased agreed to be married, lived together and held themselves out as being married. Ms. DW, the mother of the child (NF) who was recognized as the minor child of the deceased and a legal beneficiary, testified that the deceased told her that BB was the lady he wanted to spend the rest of his life with and that he considered BB to be his wife. There was also an affidavit from BB's mother tending to show that the deceased and BB were considered to be husband and wife. Several documents, including receipts and an obituary notice

indicating that BB was deceased's wife, were admitted. Contrary to this evidence were entries in medical records and a report from a rehabilitation nurse which refers to BB as the deceased "live in girl friend." While the evidence showing a common-law marriage status was certainly not overwhelming, we are unwilling to substitute our judgment for that of the hearing officer where we cannot conclude that his determination was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain, *supra*; King, *supra*.

For the foregoing reasons, the decision and order of the hearing are affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR;

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Philip F. O'Neill  
Appeals Judge

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Alan C. Ernst  
Appeals Judge