

APPEAL NO. 960592

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 14, 1996, a contested case hearing (CCH) was held. In response to the sole issue before him, that being who the legal beneficiaries of ____, deceased, are, the hearing officer determined that there was no eligible spouse, child, grandchild, or any surviving legal beneficiary, and carrier was ordered to pay death benefits to the Subsequent Injury Fund (SIF) pursuant to Sections 408.182(e), and 403.007 of the Act.

Appellant, the employer, appeals on an equitable basis that the result in this case is not what the legislature intended in passing the 1989 Act and that the "relevant statutory provisions, when combined with the deductible program of [employer] creates an anomalous situation which will work an extreme and unjust hardship on the parents of [deceased]. . . ." Employer requests that we reverse (or modify) the hearing officer's decision requiring the carrier to pay \$17,436 to the SIF or, in the alternative, that the "Commission exercise its discretion and order [carrier] or the SIF to pay the death benefits to [deceased's] surviving (non-dependent) parents or siblings or . . . to the academic scholarship fund created in memory of [deceased.]" Carrier did not file a response.

DECISION

The decision and order of the hearing officer are affirmed.

First, we address the question of whether the employer even has a standing as a party to appeal. We note that the employer corporation is owned by the parents of the deceased, and that the parents of the deceased are potential beneficiaries. The hearing officer having determined, in accordance with a verbal stipulation on the record, that the deceased "left no legal beneficiary as defined in the Texas Workers' Compensation Act," we will accept (GS), as the employer and parent of the deceased, as a proper appellant to challenge the hearing officer's determinations.

Briefly, the facts are that the deceased was a 17-year-old seasonal employee who, while employed by the employer, on August 1, 1994, was killed in the course and scope of his employment. The testimony and evidence was that the deceased had never been married, had no children, and that none of the deceased's surviving siblings, parents, stepparents or grandparents were dependent on the deceased. (See Section 408.182(d)).

Employer's insurance broker testified that before April 1994, the employer's standard workers' compensation (presumably annual) premium was \$617,000. At that

time, the employer negotiated a deductible provision where the employer reimbursed the carrier for the first \$250,000 on a claim and with the "deductible plan," the effect was to reduce the employer's worker's compensation premium to \$126,000 (a reduction of \$491,000).

Section 403.007(a) provides that "if a compensable death occurs and no legal beneficiary survives or a claim for death benefits is not timely made, the . . . carrier shall pay to the Commission for deposit to the credit of the [SIF] . . . death benefits. . . ." (Emphasis added). This provision, when applied to this case, has the effect of requiring the carrier to pay to the SIF the \$17,000 in death benefits which the employer, under its deductible plan, is then required to reimburse the carrier. Carrier, in its closing (and only) statement at the CCH, suggested that the hearing officer was in a "unique position" to find that payment of the death benefits to the SIF was "not warranted," as not meeting "any objective that the legislature had in writing this law." Carrier suggests that if the hearing officer had found no payment is warranted, "that decision will [or would have] become final for lack of an appeal." Employer's counsel, represented that the Texas Workers' Compensation Commission (Commission) assistant general counsel, representing the SIF, was "very sympathetic" and that the SIF is "not making a claim for this money."

The hearing officer, in his discussion, set out the applicable statutory provisions and stated that:

The language of the Act is mandatory, and provides no exclusion for an insurance company's liability for death benefits. The hearing officer does not believe that the Act's language grants him any discretion to create a reason based on equity to excuse the carrier from liability for death benefits.

We agree with the hearing officer's assessment of the situation and add that the Commission rules do not provide any relief. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 32.6 and 132.10 (Rules 132.6 and 132.10). The employer, both at the CCH and on appeal, alleges that the hearing officer, and subsequently the Appeals Panel, "is vested with discretion to exercise its judgment in applying the facts of any situation to the general legal principles raised by the facts." We disagree and note that the employer cites no authority for its statement and it does not cite any case law precedent which might give it relief. We do not believe that the Commission, an administrative agency, has the authority to overrule specific and explicit statutory provisions, on the ground that it does not believe the results are fair. An administrative agency only has such discretion as the legislature grants it and in this case, we do not find we have any discretion in

determining the circumstances under which funds are paid to the SIF. Generally, this agency applies and interprets the statutory requirements of the 1989 Act and is not at

liberty to completely disregard clear and explicit direction on the basis that we do not believe the legislature intended the law to apply in this particular instance.

It is said that bad facts make bad law and so it is in this case. We can only point out that the employer made a business judgment in April 1994 to adopt a "deductible plan" which would save it \$491,000 in premiums a year. Having made that business decision, we believe the employer is hard-pressed to now ask the Commission for relief on equitable principles that would somehow relieve the employer from being required to adhere to the deductible portion of its policy. The hearing officer's decision is only that the carrier pay the SIF the appropriate death benefits as they would be required to do in any similar compensable death case where there are no legal beneficiaries. If the carrier chooses not to enforce the deductible provisions of the policy, that would be a matter between the carrier and the employer.

Employer contends in its appeal that forcing the deceased's parents to pay \$17,000 to the SIF will "cause extreme hardship on [the deceased's] family." We note that the decision only requires the carrier "to pay the State" (actually the SIF) and it is up to the carrier whether or not to enforce the deductible provision in the policy. Further, we note, regarding the financial hardship claim, that the employer, even if required to reimburse the carrier, is still \$474,000 better off in a financial sense (\$491,000 less \$17,000) under the deductible plan. We are unable to grant the employer relief from its own business decision.

We regret the tragedy which has occurred but simply state that the Commission, as an administrative agency, has no authority to ignore the plain statutory provisions set out by the legislature. Employer recites that it conducted "an exhaustive research of the legislative history" and determined that the scenario in this case was apparently never considered by the legislature, yet characterizes this agency as "governmental bureaucrats" who are unwilling to deviate from the plain, clear and unambiguous provisions of a legislative statute. We suggest that if the employer wishes to seek relief on equitable grounds, it may wish to seek relief in the courts or with the legislature, or from the carrier.

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. Stephens
Appeals Judge

CONCURRING OPINION:

I concur in the result reached by Judge Knapp. This is an unfortunate situation; however, Sections 408.182(e) and 403.007 provide that death benefits are to be paid to the SIF where there are no legal beneficiaries. The hearing officer has ordered the carrier to pay death benefits to the SIF in accordance with the applicable statutes, and the employer has not cited any statute, rule, court case, or Appeals Panel decision which would provide for an exception to the required payment.

Robert W. Potts
Appeals Judge