APPEAL NO. 971148

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On May 20, 1997, a hearing was held. She (hearing officer) determined that decedent died on _____, of a compensable heatstroke, that the city (self-insured) did not sufficiently contest the compensability of the injury/death, and that the beneficiaries are the daughter and wife, while the stepdaughter is not a beneficiary. Self-insured asserts that claimant did not perform as much labor as was found by the hearing officer and that the medical evidence shows that there was no compensable injury; self-insured also states that its controversion was sufficient to dispute compensability and that daughter did not file a timely claim. Stepdaughter asserts that the hearing officer erred in finding that daughter was a beneficiary and also in finding that stepdaughter was not a beneficiary. Stepdaughter also replied that the injury/death was compensable and that the self-insured's controversion was not adequate.

DECISION

We reverse and render that an adequate controversion was filed but affirm the other issues.

Decedent was 24 years old at the time of his death. He had recently begun work for self-insured, having previously worked for a meat packer. Evidence relative to his prior job with a meat packer indicated that decedent worked in a cold or refrigerated environment. _____, was decedent's second day of actual work at his then-current job as a garbage collector. On June 15, 1995, the evidence showed that he worked approximately two hours. On _____, the evidence showed that he had worked approximately two and one-half hours at about 10:30 a.m. when he collapsed while working. (The initial note at hospital) indicates that his vital signs were first taken at 10:49 a.m.)

The evidence also shows that at 10:30 a.m. on _____, the temperature was 77□. Mr. R testified that he worked with decedent on _____. He stated that claimant took several breaks to drink water both from the water provided on the truck and from water hydrants in yards along the route. He added that he observed decedent splash water over his head. He opined that he probably moved more garbage cans than did decedent, who was able to rest for some short periods while Mr. R worked. Mr. R testified that at one point decedent's speech did not sound correct and then decedent moved erratically and fell to his knees, then lay back on the grass. Decedent was moved to shade and calls for help were made from a nearby house. Mr. R also said that claimant did not appear sick when he came to work that day, did not eat or take drugs that he saw, and appeared to drink a lot of water.

The decedent's wife testified that decedent was tired after his first day of work on June 15, 1995. She said that later that night he vomited "a little" but took no medication; she added that she took decedent to work on June 16th and said that he was alright at

that time. According to her, decedent had no ongoing medical diseases. She also stated that she, too, worked for the meat packer that decedent had recently worked for and his job involved packing meat patties into boxes on a conveyor belt and using a forklift to load boxes.

The self-insured showed that it received written notice of this injury/death on June 19, 1995, and filed its first controversion of compensability on July 7, 1995. The hearing officer ruled that the controversion was not sufficient. The self-insured's dispute included:

> carrier denies [decedent] suffered an accidental injury in the course and scope of employment traceable to a definite time, place and injury-causing event. Based on the preponderance of the evidence received to date, carrier would assert that [decedent's] condition and subsequent demise were a direct result of a naturally progressing disease of life . . .

Texas Workers' Compensation Commission Appeal No. 952063, decided January 18, 1996, reversed a determination that a controversion was insufficient when it used the term "ordinary disease of life" without identifying the disease. In addition, Texas Workers' Compensation Commission Appeal No. 960375, decided April 11, 1996, also reversed a determination that a controversion was inadequate when the words, "not due to an injury in the course and scope of employment" were used. Texas Workers' Compensation Commission Appeal No. 961887, decided November 12, 1996, stressed that "magic words" are not necessary and called for a "fair reading" in reversing a determination that a controversion was inadequate that said a hernia was not related to the original injury. The controversion under review was not insufficient to dispute compensability on the basis of an ordinary disease of life. (We note that the controversion did not raise as a defense under Section 406.032 that the heatstroke was an act of God, nor was there any issue at this hearing as to an act of God.)

Another point that was not in issue at this hearing was the assertion on appeal by self-insured that daughter did not file a timely claim. Self-insured's appeal states:

> [Self-insured] would show that Rule 122.100(a) requires that a legal beneficiary, in order to received [sic] death benefits, must file a written claim for compensation with the Commission within one year after the date of the employee's death.

Not only was this point not in issue, but no request was made to add it as an issue and self-insured specifically stated on the record at the hearing that it was "not disputing [daughter's] claim." The assertion on appeal that daughter's claim was untimely filed is also subject to Section 409.007(b)(2) which provides that a minor's claim is not barred by time; daughter was born in 1989 and is a minor. Rule 122.100(e) also states that a minor does not have to file a claim within one year. We do not interpret self-insured's appeal as stating that daughter should get no benefits prior to the date she filed a claim. *See* Rule 122.100, which makes no such proviso. This appellate point is without merit.

The other two assertions made by self-insured address the issue of compensability of the injury/death. The evidence showed that claimant and Mr. R worked for approximately two and one-half hours moving garbage cans with contents represented to weigh approximately (or not more than) 40 pounds. Mr. R characterized the work as "heavy" and Mr. V, the route supervisor for garbage collection, testified that more than one-half of the route had been completed, in which approximately 12 tons of material would have been moved. (We note that Mr. R implied that he probably moved over one-half of the amount collected at the time decedent got sick.) Therefore the finding of fact that decedent moved between one and one-half tons and three tons of material is sufficiently supported by the evidence and a reasonable inference may be drawn from the total figures provided as to what decedent had contributed to the work by the time of his death.

The medical evidence was very significant to the determination of compensability of this injury/death. The emergency room notes indicate that when decedent arrived his temperature was 108□and that he died at 12:51 of "heatstroke with coma precipitating an acute cardiac arrest." The autopsy stated that death came from heatstroke and added that it resulted from work outside in a hot environment to which decedent was not totally acclimated. The medical examiner who performed the autopsy, Dr. G, said on deposition that there was no evidence of a brain stem stroke; she stated also that brain stem hemorrhage that was sufficient to kill would be easily recognized at autopsy. She also answered a question of "producing cause," which included whether or not decedent's work as a garbage collector was a contributing cause of the death, by answering "yes" that it was a producing cause. She found no drugs or any other condition, except heatstroke, for decedent's death. She also stated that decedent was subjected to a greater hazard regarding heatstroke than ordinarily applies to the general public.

Other doctors stated as follows: Dr. R said that he agreed with Dr. K that decedent had a brain stem stroke, pointing out that the classic signs of heatstroke were not present. Dr. Ko stated that the chances of a brain stem stroke "microscopic in size" were exceedingly small. He said he contacted Dr. G and Dr. C, the Chairman of Neurology, and cited the number of military heatstroke cases Dr. C had examined. He had Dr. C talk with Dr. K, after which Dr. C concluded that the heatstroke was not caused by a brain stem stroke. Dr. J also concluded that heatstroke was the cause of death. She did not believe that there was a brain stem stroke and found no evidence of drugs or "natural disease." Dr. S said that the circumstances were unusual for heatstroke; he thought that microscopic sections were needed to rule out a brain stem stroke.

Dr. B testified by phone. He is board certified in internal medicine, nephrology, and critical care medicine; he is a professor at a Medical School. He reviewed records and a deposition. He opined that basically all the medical opinions concluded that a heatstroke occurred, but he questioned what caused the heatstroke. He thought that the decedent's nervous system was unable to regulate heat production or heat transference out of the body. He alluded to either an endocrine condition or the effects of drugs, such as those used to treat nausea or antihistamines, as interfering with decedent's ability to

regulate heat. He did not point out any evidence of either as being found in decedent, but stated that a healthy 24-year-old man does not have heatstroke in a 77□ environment after two and one-half hours of work such as decedent was doing. He also put no credence in decedent's recent work in a refrigerated location. He was of the opinion that decedent died of heatstroke due to something other than the work conditions. However, when asked if decedent's work contributed to the heatstroke, Dr. B said that there would not have been a heatstroke if the decedent were "sitting around." When asked later if "work were the cause," Dr. B said "no, not of itself." Dr. B also said that toxicological studies are not usually done for the type of drugs found in nausea medication or antihistamines that could have affected decedent's ability to regulate his temperature. He did say, though, that decedent's work was a contributor to this event, but added that without other factors, work would not have caused the heatstroke. The finding of fact that the medical evidence indicates that the decedent's work caused overheating and death by heatstroke is sufficiently supported by the records relating to Dr. G, Dr. Ko, Dr. J, and the testimony of Dr. B, who agreed that the work contributed to the death. *See* Texas Workers' Compensation Commission Appeal No. 952211, decided February 12, 1996, which pointed out that the injury related to the work could be a contributing cause and did not have to be the only cause.

Having determined that decedent's death was a compensable injury, the determination that the self-insured sufficiently controverted compensability does not control the outcome of this case.

Appeal was also taken by stepdaughter asserting that daughter should not have been found to be a beneficiary and she (stepdaughter) should have been found to be a beneficiary.

Section 408.182 provides that an eligible spouse and eligible children will receive death benefits. Section 401.011(7) says that a child means a son or daughter and includes "a stepchild who is a dependent of the employee." Section 401.011(14) then provides that a dependent is a person who receives a regular or recurring economic benefit that contributes substantially to the livelihood and welfare. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE '132.2 (Rule 132.2) provides that a person claiming death benefits as a dependent will be presumed to have received an economic benefit which contributed substantially to the that person if 20% of the claimant's resources were provided. The wife of decedent said that regular payments in cash of $50.00 to $100.00 monthly were made by decedent to her parents who cared for stepdaughter, who lived with them in the valley. The stepdaughter's grandmother by affidavit also said that decedent sent money, but did not say how much or how often. Rule 132.2 also provides that the person claiming dependency shall furnish sufficient information to show the economic benefit that was provided. The hearing officer commented in her Statement of Evidence that wife provided no documentary evidence of support decedent provided to stepdaughter and also commented about decedent's tax return in which he claimed stepdaughter as a dependent, indicating that she lived with him for the previous 12 months, in concluding that she did not believe wife's testimony in this regard. The hearing officer's finding of fact

concerning stepdaughter shows that she applied the correct standard to determine dependency and made a finding of fact that decedent did not contribute a sufficient amount to qualify stepdaughter as a beneficiary. The evidence sufficiently supports this finding of fact.

Stepdaughter also asserts that daughter should not be beneficiary. Section 401.011(7) does not impose a dependency requirement on a son or daughter. Rule 132.4 states that a biological daughter shall "submit proof of relationship." It then lists items of proof and names first, a certified copy of a birth certificate. It adds that if this does not exist, documents such as a baptismal record or paternity order or voluntary admission of paternity and other evidence may be submitted. The hearing officer admitted into evidence a certified copy of the birth certificate of daughter showing decedent specifically named as the father. In addition, a baptism register shows that daughter was baptized as the child of decedent on June 30, 1989 with a sponsor named (Mr. S), who testified at the hearing that he was present at the baptism. The evidence was sufficient for the hearing officer to find that daughter was the beneficiary of the decedent. There was no appeal taken to the determination that wife was the wife of decedent and as such is an eligible beneficiary.

The determination that self-insured did not sufficiently controvert the compensability of the injury/death is reversed and the decision and order are changed to reflect that self-insured did sufficiently contest compensability. In all other matters, the decision and order found at the conclusion of the opinion of the hearing officer are affirmed. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge