

APPEAL NO. 981139

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 27, 1998. With respect to the sole issue before him, the hearing officer determined that KJ (claimant) was not dependent on JK, Jr. (decedent), at the time of his death, thus, she is not entitled to death benefits. In her appeal, the claimant essentially argues that those determinations are against the great weight and preponderance of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that on ____, the decedent sustained compensable injuries that caused his death and that the claimant is the decedent's natural mother. The claimant testified that from Valentine's Day 1996, until his death on ____, the decedent lived with her and gave her \$50.00 per week. She testified that he performed services around the house, which included repairing the carpet, mowing the lawn, performing car repairs, and taking out the trash. She stated that the decedent rented movies approximately three times per week for her enjoyment. The claimant testified that the total value of the cash contributions and the decedent's services for the period at issue was between \$6,000.00 and \$6,100.00. The claimant also testified that for the period from February 14 to ____, she and her husband had income totaling \$50,000.00 and that after social security taxes and federal income tax withholding, their "net resources" under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.2(d) (Rule 132.2(d)) were \$42,000.00. The claimant also testified that she and her husband had expenses in the amount of \$38,184.26, during that period. She maintained that the claimant's cash contributions and his services "contributed significantly to [her] welfare and livelihood", that she was dependent of the decedent within the meaning of Rule 132.2, and that she is entitled to death benefits.

The hearing officer determined that the claimant did not satisfy her burden of proving that she was entitled to death benefits because she did not establish that she was dependent on the decedent within the meaning of the 1989 Act. Under Rule 132.6 a parent is entitled to receive death benefits, if there is no eligible spouse, child or grandchild, and if the claimant establishes dependency under Rule 132.2. The claimant does not argue that she received an economic benefit from the decedent with a value equal to or greater than 20% of her net resources, such that she satisfies the presumption in Rule 132.2(c). Rather, she argues that the decedent's contribution of money and services contributed significantly to her welfare and livelihood if his contribution is viewed in relation to the amount of her discretionary income. However, the basis of comparison for determining dependency in Rule 132.2 is the claimant's net resources not her discretionary

income. The hearing officer determined that the "[decedent's] payments and assistance were more to cover his living expenses than a significant contribution to his mother's welfare and livelihood for workers' compensation eligibility" and that "[claimant] was not a dependent of [decedent] entitling her to death benefits." After reviewing the record, we cannot agree with the claimant's assertion that the great weight of the evidence demonstrates that the claimant was a dependent of the decedent within the meaning of the 1989 Act at the time of his death. Therefore, no sound basis exists for us to reverse the hearing officer's determination that the claimant is not entitled to death benefits. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Christopher L. Rhodes
Appeals Judge