

APPEAL NO. 020114
FILED FEBRUARY 26, 2002

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 December 10, 2001. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) was not a dependent of the deceased on the date of death and is not entitled to death benefits. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

The parties stipulated that the deceased died as a result of his compensable injury on _____, and that on the date of death, there was no eligible spouse, child, or grandchild of the deceased. It is undisputed that the claimant is the deceased's mother.

Section 408.181(a) provides that an insurance carrier shall pay death benefits to the legal beneficiary if a compensable injury to the employee results in death. Section 408.182(d) provides that if there is no eligible spouse, no eligible child, and no eligible grandchild, the death benefits shall be paid in equal shares to surviving dependents of the deceased employee who are parents, stepparents, siblings, or grandparents of the deceased.

The question before the hearing officer was whether the claimant was a dependent of the deceased on the date of death, thereby entitling her to death benefits. The claimant cites Stanaland v. Traders & General Ins. Co, 145 Tex. 105, 195 S.W.2d 118 (1946) in support of her claim for benefits. In that case, the court determined that the trial court had given a substantially correct definition of "dependent" under the provisions of the workers' compensation law as such law then existed when the trial court defined "dependent" as "a person who relied in whole or in part upon the assistance he or she received for support from the deceased." However, the 1989 Act, which is the law under which this case must be decided, defines "dependent" as "an individual who receives a regular or recurring economic benefit that contributes substantially to the individual's welfare and livelihood if the individual is eligible for distribution of benefits under Chapter 408."

Section 402.061 provides that the Texas Workers' Compensation Commission "shall adopt rules as necessary for the implementation and enforcement of this subtitle." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.6(a) (Rule 132.6(a)) provides that a parent, stepparent, sibling, or grandparent of a deceased employee who was dependent on the employee on the day of death is entitled to receive death benefits, only if there is no eligible spouse, child, or grandchild. Rule 132.6(b) provides, in part, that the claimant shall submit evidence of dependence on the deceased employee as defined in Rule 132.2. Rule 132.2(b) provides that a benefit which flowed from a deceased employee, at the time of death, on an established basis in at least monthly intervals to the person claiming to be

dependent, is presumed to be a regular or recurring economic benefit; that the economic presumption can be overcome by credible evidence; and that the burden is on the claimant to prove that benefits, which flowed less frequently than once a month, were regular or recurring at the time of the employee's death. Rule 132.2(c) provides that it shall be presumed that an economic benefit, whose value was equal to or greater than 20% of the person's net resources in the period for which the benefit was paid, is an economic benefit which contributed substantially to the person's welfare and livelihood; that the presumption may be overcome by credible evidence; and that the burden is on the claimant to prove that benefits whose value was less than 20% of the person's net resources contributed significantly to the person's welfare and livelihood.

The claimant testified regarding the money, goods, and services that had been provided to her by the deceased, and provided some documentary support in the form of a check register and canceled checks. The evidence reflected that the benefits from the deceased to the claimant did not flow on an established basis in at least monthly intervals and that the value of the benefits was not equal to or greater than 20% of the claimant's net resources in the period in which the benefits were paid, therefore, the presumptions in Rules 132.2(a) and (b) did not apply and the claimant had the burden to prove that the economic benefits were regular or recurring at the time of the deceased's death and that the benefits contributed substantially to the claimant's welfare and livelihood.

The hearing officer determined that the claimant failed to prove by a preponderance of the evidence that the economic benefit provided (by the deceased) contributed significantly or substantially to the claimant's welfare and livelihood, and concluded that the claimant was not a dependent of the deceased on the date of the deceased's death and thus is not entitled to death benefits. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
COMMODORE 1
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge