

APPEAL NO. 021004
FILED JUNE 13, 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 (CCH) was held on March 18, 2002, with the record closing on April 5, 2002. The hearing officer determined that GC and PC are the legal beneficiaries of the decedent employee, and that ISC, MLC; DC, IG, HL and ML, are not legal beneficiaries. ISC (claimant #1) and MLC (claimant #2) individually and as next friend of DC a minor child, appeal.

DECISION

Affirm in part, reverse and render in part.

It is undisputed that the decedent died on _____, from a compensable injury. Therefore, his legal beneficiaries are entitled to death benefits under the 1989 Act. This appeal involves the claim of a spouse, an alleged putative spouse, and an alleged dependent of the decedent. At the CCH, the carrier did not dispute compensability, but merely sought a decision regarding the identities of the beneficiaries.

SPOUSE

It is undisputed that the decedent married claimant #1 on April 18, 1992, and that although they were never legally divorced, the decedent left claimant #1 in 1994. Claimant #1 was still married to the decedent at the time of his death so the only dispute is whether claimant #1 is an "eligible spouse" within the meaning of Section 408.182 (f)(3) and [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.3(b) (Rule 132.3(b)), and, more specifically, whether claimant #1 abandoned the decedent for longer than the year immediately preceding the death, without good cause. Rule 132.3(b) also provides that the "surviving spouse shall be deemed to have abandoned the employee if the surviving spouse and the employee had not been living in the same household for more than one year preceding the employees' death...." It is undisputed in this case that claimant #1, as the surviving spouse, and the decedent employee had not been living in the same house for more than one year preceding the decedent's death. Thus there is support for the hearing officer's determination that claimant #1 did abandon the decedent employee for longer than the year preceding decedent's death.

However, Rule 132.3(b) also indicates that abandonment occurs where the claimant abandons the employee without good cause. Although the hearing officer includes a general finding of fact that claimant #1 did not have good cause for her abandonment, there are not detailed findings on good cause nor discussion of any evidence related to good cause. Our review of the record reveals very little, if any, evidence to support a conclusion that claimant #1 did not have good cause to abandon the decedent. It is undisputed that upon leaving claimant #1, the decedent lived with at least two other women while still married to claimant #1. There is no explanation from

the hearing officer as to why the decedent's abandonment of claimant #1 or infidelity would not constitute good cause for claimant #1 to "abandon" the decedent. Consequently, we reverse the hearing officer's determination that claimant #1 abandoned the decedent without good cause because that determination is against the great weight of the evidence. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We render a new decision that claimant #1 had good cause to abandon the decedent and is a legal beneficiary of the decedent.

PUTATIVE SPOUSE

Although the decedent never obtained a divorce from his first wife, claimant #2 contends that she is entitled to benefits as the putative spouse of the decedent because she did not know that the decedent was still married when she married him on May 8, 1994. Claimant #2 admits that she discovered the decedent was still married to claimant #1 in 1996. Evidence of the decedent's prior marriage was an impediment to a valid marriage to claimant #2. See Rule 132.3(c).

A putative marriage is one which was entered into in good faith by at least one of the parties, but which is invalid by reason of an existing impediment on the part of one or both of the parties. Garduno v. Garduno, 760 S.W.2d 735 (Tex. App.-Corpus Christi 1988, no writ). A putative marriage is based upon good faith and ignorance of the impediment. Esparza v. Esparza, 382 S.W.2d 162 (Tex. Civ. App.-Corpus Christi 1964, no writ). According to the decision and law set forth in Garduno, *supra*, claimant #2 was no longer acting in good faith after she learned in 1996 that the decedent had not divorced claimant #1 and accordingly, at this point, any putative marriage came to an end. The hearing officer's determination that claimant #2 is not a putative spouse of the decedent has sufficient legal and factual support in the record. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

DEPENDENT

The hearing officer's determination that (DC) is not a dependant legal beneficiary is also appealed. It is undisputed that DC was not the biological child of the decedent. Conflicting evidence was offered in regard to whether DC was a dependent of the decedent. After review of the record and the complained-of determination, we have concluded that there is sufficient legal and factual support for the hearing officer's determination that DC was not a legal beneficiary. Cain, *supra*.

We affirm the hearing officer's decision and order that claimant #2 and DC were not legal beneficiaries and reverse and render a new decision that claimant #1 had good cause to abandon the decedent and is also a legal beneficiary of the decedent, in addition to GC and PC.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** 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.**

Roy L. Warren
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge