

APPEAL NO. 032710
FILED DECEMBER 4, 2003

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 September 22, 2003. The hearing officer resolved the disputed issues by deciding that the legal beneficiaries of (decendent) are the appellant/cross-respondent, ML the decedent's common law wife, and AL, LL, RG, and JL (herein referred to collectively as the decedent's stepchildren) and that the respondent/cross-appellant (carrier) is relieved of liability under Section 409.007 for ML because of her failure to timely file a claim for death benefits with the Texas Workers' Compensation Commission (Commission) but not for the decedent's stepchildren. The hearing officer further determined that the entitlement to death benefits began to accrue on June 5, 2001, and that the decedent's stepchildren are each entitled to 25% of the weekly death benefit until he or she is no longer eligible to receive benefits under the provisions of Section 408.183 and 408.184. Both parties appealed. The carrier appealed, arguing that the evidence does not support the beneficiary status of the decedent's alleged common-law wife or the four children, who allege stepchildren status, and that the four alleged stepchildren did not properly establish good cause for their failure to timely file this claim for benefits. The appeal file did not contain a response from ML. ML appealed, arguing that the determination that she did not have good cause for her failure to timely file a claim for death benefits with the Commission is in error. ML argues that the hearing officer used the wrong standard when analyzing the facts. The carrier responded, urging affirmance of the disputed determination.

DECISION

Affirmed.

The parties stipulated that the decedent sustained an injury in the course and scope of employment on _____, and died as a direct result of the injury. At issue was the determination of the legal beneficiaries of the decedent and whether the carrier is relieved of liability under Section 409.007 because of the failure of ML and the decedent's stepchildren to timely file a claim for death benefits with the Commission. In evidence was an amended decree from the 255th Judicial District Court that during the period of February 1992 until June 5, 2001, the decedent and ML had a marriage without formalities as described under Section 1.91(a)(2) of the Texas Family Code. There is sufficient evidence to support the hearing officer's determination that ML was a legal beneficiary of the decedent.

Section 408.182(f) defines "eligible child" as a child of the deceased employee if the child is a minor, enrolled as a full-time student in an accredited educational institution and is less than 25 years of age; or a dependent of the deceased employee at the time of the employee's death. The requirement for determining whether an individual meets the statutory criteria for dependency is contained in Tex. W.C.

Comm'n, 28 TEX. ADMIN. CODE § 132.2 (Rule 132.2). Rule 132.2(b) provides, in part, 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 and that the presumption may be overcome by credible evidence. Rule 132.2(c) provides, in part, 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 and that this presumption may be overcome by credible evidence.

The issue of a claimant's dependency for purposes of benefits under the 1989 Act is generally a factual matter for the hearing officer's determination. Texas Workers' Compensation Commission Appeal No. 92523, decided November 18, 1992. We note that Rule 132.2(e) states that to enable the Commission to accurately identify a claimant's net resources and to establish the existence of the economic benefit claimed, information such as tax returns, financial statements, and check stubs may be used. While written records indicating the amount of the claimant's net income and the amount and frequency of the deceased's contributions is preferable, it is not mandatory, and lack of documentary evidence goes to the weight to be given the testimonial or other written evidence. Texas Workers' Compensation Commission Appeal No. 990953, decided June 16, 1999; Texas Workers' Compensation Commission Appeal No. 961330, decided August 23, 1996.

The hearing officer determined that the decedent provided in excess of 20% of the net resources available to each of the decedent's stepchildren as an economic benefit to each of the minor stepchildren prior to the date of his death and that the decedent contributed substantially to each child's welfare and livelihood. There was evidence that the decedent provided the necessities for the stepchildren and that no one else provided financial benefit for the children other than ML and the decedent. The income tax returns in evidence reflect that the decedent earned the vast majority of the income for the family.

We will reverse a factual determination of a hearing officer only if that determination is 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, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find the evidence sufficient to support the determination that the stepchildren are legal beneficiaries of the decedent.

We next turn to the issue of timely filing. The hearing officer found that good cause did not exist for ML's failure to timely file a claim for death benefits and determined that the carrier was relieved of liability under Section 409.007 for ML because of her failure to timely file a claim for death benefits with the Commission. The claimant argues that the hearing officer used the wrong standard in determining that there was no good cause. ML argued at the CCH that she did not file a claim earlier because she received and relied upon bad legal advice. The hearing officer noted in

her Statement of the Evidence that the claimant's assertion of good cause due to ignorance, mistake, or bad legal advice is not sufficient to prove good cause. The Appeals Panel has held that ignorance of the law does not constitute good cause to excuse an untimely filing. Texas Workers' Compensation Commission Appeal No. 93423, decided July 12, 1993; see *also* St. Paul Fire and Marine Insurance Company v. Lake Livingston Properties, Incorporated, 546 S.W.2d 404 (Tex. Civ. App.-Beaumont 1977, writ ref'd, n.r.e) which held as a matter of law that bad advice from one's attorney as to the time for filing a claim does not constitute good cause. We affirm the determination that there was no good cause for ML's failure to timely file a claim for death benefits.

Section 409.007 provides in relevant part that:

- (a) A person must file a claim for death benefits with the commission not later than the first anniversary of the date of the employee's death.
- (b) Failure to file in the time required by Subsection (a) bars the claim unless:
 - (1) the person is a minor or incompetent; or
 - (2) good cause exists for the failure to file a claim under this section.

There was sufficient evidence to establish that all four of the stepchildren were minors. We reject the carrier's argument on appeal that the stepchildren failed to establish good cause for their failure to timely file a claim for death benefits. The statute provides an exception to the requirement that the claim for death benefits be filed with the Commission no later than the first anniversary of the date of the employee's death if the person filing is a minor. There was sufficient evidence that the stepchildren were minors at the time of the decedent's death and at the time of the CCH. There was no additional requirement for them to prove anything else to meet the stated exception.

Finally, we turn to the carrier's contention that the subsequent injury fund (SIF) was not properly notified of the time, date, or place for the CCH as reflected by the records. The notice dated August 5, 2003, setting the CCH for September 22, 2003, at 9:00 a.m. was in evidence and reflected that notice was sent to the SIF. We additionally note that whether or not the SIF received adequate notice was not an issue to be decided at the CCH and that the 1989 Act specifically limits the issues before the hearing officer to those raised at the benefit review conference (BRC), consented to by the parties, or if not raised at the BRC, a good cause determination was found for not raising the issue at the BRC. Section 410.151.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge