

APPEAL NO. 040801
FILED MAY 26, 2004

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 March 9, 2004. With respect to the single issue before her, the hearing officer determined that the appellant (claimant beneficiary) is not a legal beneficiary of (decedent) and, therefore, she is not entitled to death benefits. In her appeal, the claimant/beneficiary argues that the hearing officer erred in determining that she was not the common-law spouse of the decedent. In addition, the claimant argues that the hearing officer "abused her discretion by failing to maintain a neutral position in the case and allowing bias to determine her decision and order." In its response to the claimant beneficiary's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant beneficiary was not the decedent's common-law spouse. That issue presented a question of fact for the hearing officer. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence and she resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. In this instance, there was conflicting evidence on the issue of whether the claimant beneficiary and the deceased satisfied the requirements of establishing that they entered into a common-law marriage. The hearing officer was acting within her province as the fact finder in determining that the claimant did not sustain her burden of proving that she was the common-law spouse of the decedent. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse that determination, or the determination that the claimant beneficiary is not entitled to death benefits, on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant beneficiary also argues that the hearing officer was biased and that her decision was a product of that bias. Our review of the record does not support the assertion of bias in this instance. The claimant beneficiary's attorney also makes an assertion of systemic bias on the part of the hearing officer, contending that she has never found for one of his clients. Such an assertion is not properly raised here. Rather, an assertion of systemic bias on the part of the hearing officer should be raised in another forum.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS BUILDERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**BETTYE ANN ROGERS WESLEY
11612 RM 2244 (BEE CAVES ROAD), BUILDING 1
AUSTIN, TEXAS 78738.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge