

APPEAL NO. 041223
FILED JULY 8, 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 (CCH) was held on April 15, 2004. With regard to the only issue before her, the hearing officer determined that appellant, LF (referred to as the claimant beneficiary) is not a proper beneficiary of the decedent, entitling her to death benefits.

The claimant beneficiary appealed, contending that her relationship with the decedent met all the requirements of an informal marriage pursuant to Vernon's Texas Code Annotated, Family Code § 2.401(a)(2) (hereafter Family Code). The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the decedent died as a result of injuries suffered in the course and scope of employment on _____. In 1999 the claimant beneficiary was a human resources manager for the employer and interviewed and hired the decedent. The evidence was, and the hearing officer found, that the decedent and claimant beneficiary began living together around the end of 1999 and by December 2000 had agreed to be married. Family Code Section 2.401, pertaining to proof of informal marriages, provides that in any judicial, administrative, or other proceeding, a marriage may be proved by evidence that the couple "agreed to be married, and after that agreement they lived together in this state as husband and wife and there represented to others that they were married." The hearing officer found, and is supported by the evidence, that the decedent and claimant beneficiary began living together at the end of 1999, that they agreed to be married in the future at or about December 2000, and that they held themselves out as husband and wife to their family and some friends/coworkers. The claimant beneficiary contends that is all that was required by the statute and there is no requirement as to "some minimum number of times that one must hold themselves out as husband and wife." The hearing officer was clearly troubled by the fact that the decedent and the claimant beneficiary kept their relationship secret from the employer (ostensibly because of the conflict of interest due to claimant beneficiary's position as a human resources manager), from the Internal Revenue Services (because the decedent owed back child support the decedent and claimant beneficiary feared any refunds they received would be attached to pay the child support) and from creditors and banks (because of the decedent's poor credit). Even after the claimant beneficiary changed jobs and began employment with another employer the decedent and the claimant beneficiary did not list each other as spouses on their employment and pay records. There was conflicting evidence and the hearing officer commented that the claimant beneficiary did not establish that there was more

than an occasional reference to a marriage and an agreement to be married in the future which did not rise to the level of establishing a common-law marriage.

The statutory requirement of Family Code Section 2.401(a)(2) “represented to others” is synonymous with the judicial requirement of “holding out to the public.” Winfield v. Renfro, 821 S.W.2d 640, 648 (Tex. App-Houston [1st Dist.] 1987, writ ref’d n.r.e.). The hearing officer determined that the decedent and the claimant beneficiary, while holding themselves out as husband and wife to their family and some friends, “did not hold themselves out as husband and wife to the public.” Furthermore, as stated by the Winfield court, if the relationship is secret “it is not a common-law marriage” and that a common-law marriage “is more than a contract; it is a public status.” *Id* at 650. It appears incongruous to hold one’s self out to select family and friends as married but to conceal that relationship, for whatever reason, from employers, the IRS, and financial institutions/creditors.

The claimant beneficiary, both at the CCH and on appeal, references a Probate Court proceeding whereby a “judicial determination of heirship” was issued determining that the claimant beneficiary was the surviving spouse of the decedent. The claimant beneficiary contends that “judicial determination [of the Probate Court] should be given significant consideration.” However, no evidence or order from the Probate Court was offered or admitted in evidence, nor was there evidence of what was submitted to the Probate Court in the uncontested matter. We decline to speculate what, if any, effect such evidence might have had, had it been admitted.

There was conflicting evidence and the 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). Our review of the record indicates that the hearing officer applied the proper legal standards and that her decision is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **mitsui sumitomo insurance company of america** and the name and address of its registered agent for service of process is

**PRENTICE-HALL CORPORATION SYSTEMS, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

CONCUR IN THE RESULT:

Edward Vilano
Appeals Judge