

APPEAL NO. 131176  
FILED JULY 19, 2013

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 12, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that respondent 2 (claimant beneficiary 2) is a proper legal beneficiary of (decedent), entitling him to death benefits and appellant (claimant beneficiary 1) is not a proper legal beneficiary of decedent and is not entitled to death benefits.

The claimant beneficiary 1 appealed, contending that he meets the definition of "eligible parent" contained in the statute and rules and that claimant beneficiary 2 is not entitled to death benefits. Respondent 1 (carrier) responded, urging affirmance. The appeal file does not contain a response from claimant beneficiary 2.

DECISION

Affirmed in part and reversed and rendered in part.

It was undisputed that the claimant sustained a compensable injury in the course and scope of his employment on [date of injury], resulting in his death. [LS] was the mother of the decedent. Claimant beneficiary 2 was the biological father of the decedent. Claimant beneficiary 1 was the decedent's stepfather.

The sole issue before the hearing officer was as follows: Is claimant beneficiary 2, biological father, or claimant beneficiary 1, stepfather, a proper legal beneficiary of decedent entitling either of them to death benefits? Although not noted in the decision and order, the Benefit Review Conference Report and the parties at the CCH represented that it was undisputed that LS, the decedent's mother, is a proper legal beneficiary of decedent entitling her to death benefits.

In evidence is an affidavit from LS which states in part that the decedent was never married and did not have any children. Claimant beneficiary 1 testified at the CCH that at the time of his death, the decedent was living in the household of claimant beneficiary 1 without paying rent. There was no evidence in the record that anyone else was financially dependent upon the decedent. Section 408.182(d-1) provides:

If there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. A payment of death benefits under this subsection may not exceed one payment per household. Total payments under this

section may not exceed 104 weeks regardless of the number of surviving eligible parents.

Section 408.182(f)(4) defines “eligible parent” as the mother or the father of a deceased employee, including an adoptive parent or stepparent. The term does not include a parent whose parental rights have been terminated. 28 TEX. ADMIN. CODE § 132.9(d) (Rule 132.9(d)) provides that an eligible parent who is entitled to receive death benefits shall receive benefits until the earlier of: (1) the date the eligible parent dies; or (2) the date of the expiration of 104 weeks of death benefit payments.

The status of a beneficiary under the 1989 Act is determined as of the date of the workers’ death. Freeman v. Texas Compensation Ins. Co., 603 S.W.2d 186, 190 (Tex. 1980). Although much of the testimony at the CCH discussed the lack of contact and support of claimant beneficiary 2, there was no evidence presented that the parental rights of claimant beneficiary 2 have been terminated. It was undisputed that claimant beneficiary 2 was the biological father of the decedent. That portion of the hearing officer’s determination that claimant beneficiary 2 is a proper legal beneficiary of decedent entitling him to death benefits is supported by sufficient evidence and is affirmed.

The statutory definition of eligible parent quoted above defines eligibility in terms of the familial relationship with the decedent with the only exclusion being the termination of parental rights. See *also* Rule 132.11(e). The evidence established that at the time of the decedent’s death, claimant beneficiary 1 was married to the decedent’s biological mother and was the decedent’s stepfather. There is nothing in the language of Section 408.182(f)(4) to suggest that certain types of parents, such as stepparents be treated differently than other parents. Although Section 408.182(d-1) provides that a payment of death benefits made under this subsection may not exceed one payment per household, it also provides that death benefits shall be paid in equal shares to surviving eligible parents of the deceased. Accordingly, we reverse the hearing officer’s determination that claimant beneficiary 1 is not a proper legal beneficiary of decedent and is not entitled to death benefits and render a new decision that claimant beneficiary 1 is a proper legal beneficiary of decedent and is entitled to death benefits.

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

**CINDY GHALIBAF**  
**5221 NORTH O'CONNOR BOULEVARD, SUITE 400**  
**IRVING, TEXAS 75039-3711.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge