

APPEAL NO. 980241
FILED MARCH 26, 1998

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 January 5, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. He determined that the appellant (Carrier 1) provided workers' compensation insurance for the employer on the date of the injury. Carrier 1 appeals this determination, asserting both legal error and insufficient evidence to support the decision. The respondent (Carrier 2) replies that the decision is correct, supported by sufficient evidence, and should be affirmed. Carrier 1 requests that the decision be reversed and a new decision rendered that Carrier 2 provided workers' compensation coverage on the date of the injury.

DECISION

Affirmed.

The claimant in this case sustained a compensable injury on _____. In Texas Workers' Compensation Commission Appeal No. 951907, decided December 22, 1995, we reversed the determination of the hearing officer regarding the identity of the employer. On remand, the hearing officer determined that (employer) was the claimant's employer on _____, for purposes of the 1989 Act. This decision was not appealed and became final. Section 410.169. Carrier 1 represented at the CCH that it had paid medical and income benefits and only discovered sometime later, under circumstances not explained, that Carrier 2 provided coverage and should have been liable.

In evidence was a policy issued by Carrier 2 which insured the employer for the period from February 24 to December 31, 1994. Endorsement No. 11 to this policy stated:

It is hereby understood and agreed that coverage afforded by this policy applies to operations conducted at project sites for which a construction contract has been properly executed for the assigned contractor a copy of which is on file with the named insured.

There follows a list of project sites. The site where the injury occurred is not listed. The contract for that project was not signed until September 1994.

Mr. S, identified as an "Account Executive" for Carrier 2, submitted an affidavit in which he stated that no project site additions were made to Endorsement No. 11. Carrier 2 never collected premiums to provide workers' compensation coverage for the site of the injury; and Carrier 2 never paid any claims or provided coverage for this site.

The hearing officer made findings of fact that Carrier 2 "issued a site-specific" policy (Finding of Fact No. 4) and the project where the injury occurred "is not a listed site" (Finding of Fact 5). In its appeal of these findings, Carrier 1 observes that the project site could not have been listed on Endorsement No. 11 at the time this endorsement was prepared because the project did not exist at that time. It argues that "the plain language of the policy, and a reasonable interpretation of the policy, allows for coverage on new construction sites and that the site at which the employee was injured was a new site." It then offered into evidence what it describes as an "executed contract" between the employer and the general contractor and maintains that the existence of this contract, in itself, satisfies the requirements of Endorsement No. 11.

The hearing officer construed Carrier 2's policy to require that a site be expressly listed on Endorsement 11. This is, we believe, a reasonable interpretation of the provision for a "properly executed" contract and is consistent with the affidavit of Mr. S. Thus, we find no error in the refusal of the hearing officer to find Carrier 2 liable for this claim.

The hearing officer further found that a "recording agency" issued a certification of insurance to the employer for this project with Carrier 1 listed as the carrier on the certificate. At the CCH, the hearing officer stated his belief that a "recording agency" had the legal authority to bind a carrier. The carrier asserted on appeal that the payment of premiums is a condition precedent to the establishment of liability of the insurer and no premiums were collected by Carrier 1 for this side. It further asserts that the certification issued by the agency was by its terms a matter of information only, and as late as November 1994, the employer was still asking for premium quotes based on the inclusion or exclusion of the class of office workers from coverage.

We note, initially, that Carrier 1's argument that there was no contract of insurance, but only a request for information, is somewhat undercut by its payment of benefits once the employer was identified. Second, we observe that Carrier 1's appeal is replete with assertions of fact as to what transpired in this case. Such assertions were generally not supported by evidence in the record. Third, no evidence was presented from the files of the Texas Workers' Compensation Commission about the submission of various forms to establish or terminate coverage. For these reasons, we will address in this appeal the legal and factual sufficiency of the express basis on which the hearing officer issued his decision.

The hearing officer considered the actions of the agency, as a recording agency, binding on Carrier 1. Carrier 1 argues on appeal that a recording agent has no authority to create an obligation of coverage when it had no authority to do so, and no premiums were paid. The cases cited¹ by Carrier 1 in support of this proposition dealt

¹Roberts v. Massachusetts Indemnity and Life Insurance Company, 713 S.W.2d 159 (Tex. Civ. App.-Dallas,

with life insurance and specific terms of the contract of insurance. We do not consider them controlling in this case and find no error of law in the determination of the hearing officer that the agency was a recording agency.

Carrier 1 next argues that the certificate issued by the agency contained the disclaimer that it was issued "as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below." The certificate referred to a policy number and listed Carrier 1 as "affording coverage." The certificate holder identified was not the employer. The policy itself was not introduced into evidence, but the policy covered the period from October 20, 1994, to October 20, 1995. Thus, we conclude that this disclaimer was intended not to provide coverage for the certificate holder, but did provide coverage by Carrier 1 to the "insured," who was the employer in this case. Given this evidence and the paucity of other evidence to support or defeat various alternative and contending theories of liability or non-liability, we are unwilling to conclude that the hearing officer erred as a matter of law or lacked a sufficient evidentiary basis in concluding that Carrier 1 provided workers' compensation coverage in this case.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge

1986, writ ref'd n.r.e.) and Walker v. Federal Kempler Life Assurance Company, 828 S.W.2d 442 (Tex. Civ. App.-San Antonio, 1992, writ denied)