

APPEAL NO. 991480

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 June 22, 1999. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) employer on _____, for purposes of the 1989 Act was (employer 1). In her appeal, the claimant argues that her activities at the time of her injury were being controlled by (employer 2 or self-insured, depending upon the context of the reference) and that, thus, employer 2 is her employer for purposes of workers' compensation. In its response, self-insured urges affirmance.

DECISION

Affirmed.

The claimant testified that in December 1997, she was hired by employer 1 to operate a van owned by employer 2 that provided transportation to disabled people. She testified that she wears a uniform that has employer 2's name on it and that she wears an identification badge that likewise bears the logo of employer 2 in large letters. She stated that she arrives at work in the morning at employer 1's premises; that she is given a manifest, which advises her of her route; that her route primarily is the same from day to day; and that if there is an addition or modification of the manifest during the day, she is contacted by a dispatcher from employer 1 and advised of the change. She stated that those dispatchers are located at employer 2's premises. The claimant testified that a part of her job is to assist passengers in getting in and out of the van and the seats and that on _____, she was injured helping a passenger from a wheelchair to a seat on the van.

Mr. C testified that he is the operations manager for employer 1 and that employer 1 has a contract with employer 2 to transport disabled passengers for employer 2. Mr. C stated that he is the claimant's supervisor; that the claimant's actions are directed by employer 1; that employer 1 receives its directions from employer 2; that the vehicles are owned by employer 2; and that employer 1 provides maintenance and insurance on the vehicles. On cross-examination, Mr. C stated that the daily manifests are prepared by employer 2; that employer 1 picks the manifests up from employer 2; that employer 1 distributes the manifests to the drivers; that additions and changes to the manifest are likewise made by employer 2; that employer 2 calls an employer 1 dispatcher with the information concerning those changes; and that the employer 1 dispatcher contacts the van driver about any change or modification in the manifest. Mr. C also stated that employer 2 makes the decision of whether the drivers of the vans are to assist the passengers in getting on and off the bus and that that information is contained in the manifest.

The hearing officer determined that employer 2 "did not control or direct the daily work activities of Claimant on _____;" therefore, she further determined that employer 2 is not liable for workers' compensation benefits. The claimant argues on appeal the because employer 2 provided the vans and drew up the daily manifests, it "controlled and

directed" her activities. That is, the claimant argues that because employer 2 provided the equipment she drove and established the route she drove and the passengers she transported, it retained a right of control over her work activities such that she was an employee of employer 2 for purposes of workers' compensation. The hearing officer stated in her discussion that "Claimant's evidence was insufficient to support a finding that her actions were controlled or directed by [employer 2] and that she was an employee of [employer 2]. Claimant was an employee of [employer 1], who was a non-subscriber, therefore, joinder of another Carrier was not necessary to the disposition of this matter." The hearing officer apparently determined that employer 2's actions of providing the van and preparing the manifest were insufficient to demonstrate a right of control over the claimant in light of the fact that employer 1 hired the claimant, paid her, trained her, and gave her the manifest each day. The hearing officer also noted that the claimant's supervisor and the dispatcher who contacted her with schedule changes were employees of employer 1. The question of who was the claimant's employer for purposes of workers' compensation on _____, was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence under Section 410.165(a). As such, it was her responsibility to consider the evidence before her and to determine if the claimant sustained her burden of proving that employer 2 was her employer on the date of her injury at work. In this instance, the hearing officer was not persuaded that the actions performed by employer 2 of providing the equipment and preparing the daily manifests, were sufficient to demonstrate a retained right to control over the claimant's daily activities such that she was an employee of employer 2 and, thus, a covered employee under the 1989 Act. Our review of the record does not demonstrate that that determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse the hearing officer's determination that the claimant was an employee of employer 1 and not employer 2 on the date of her injury at work. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge