

APPEAL NO. 991938

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 July 15 and August 2, 1999. With respect to the issues before him, the hearing officer determined that the appellant (claimant) was an employee of an independent contractor on the date of his claimed injury; that he, therefore, did not sustain a compensable injury on _____; and that he did not have disability within the meaning of the 1989 Act because he did not sustain a compensable injury. In his appeal, the claimant challenges four findings of fact and three conclusions of law, without making any specific argument as to how those findings and conclusions are erroneous. His appeal will be treated as a sufficiency challenge. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was working as a truck driver, driving an 18-wheeler that was owned by Mr. S. He stated that he hauled loads for (FTS). On _____, the claimant was spreading a tarp over a load of lumber, when a wind gust caught the tarp and threw the claimant off the truck. The claimant testified that the truck he drove had an FTS decal on it, that he only hauled loads for FTS, and that he was dispatched by Mr. H and Mrs. H, who he believed were employees of FTS.

The carrier introduced documents that reflect that Mr. S leased the truck that the claimant was driving at the time of his injury to (BTS), which later changed its name to FTS. The terms of the lease agreement provide that Mr. S was an independent contractor and not an employee of FTS and that the drivers who drove his equipment were also not employees of FTS. As part of the lease agreement, Mr. S was provided an occupational accident employee welfare benefit plan for himself and his employees.

The claimant was employed as a truck driver in November 1996. At that time, the claimant signed an acknowledgment that he was covered by the occupational accident employee welfare benefit plan and not workers' compensation. On March 22, 1997, the claimant submitted a claim for benefits under the occupational accident policy. On the face of that document, Mr. S is listed as the claimant's employer and the form is signed by the claimant and Mr. S.

Mr. G, vice president for personnel and safety for FTS, testified that neither Mr. H nor Mrs. H are employees of FTS. Rather, he explained that they are independent contractors that dispatch for FTS and other motor carriers. Mr. G also testified that Mr. S is an independent contractor who owns trucks which he has long-term leased to FTS. Mr. G

stated that Mr. S receives a percentage of the loads that are hauled in the trucks that he owns and that Mr. S pays his drivers out of that percentage.

The key question in this case is whether the claimant was an employee of FTS or was the employee of an independent contractor, Mr. S, at the time of his injury. In the discussion section of his decision, the hearing officer stated "[t]he documents introduced along with the testimony presented clearly showed that the Claimant was the employee of [Mr. S] and that [Mr. S] was an independent contractor working for [FTS]."¹ The documentary evidence presented by the carrier included a lease agreement, wherein Mr. S agreed to lease his trucks to FTS. That agreement specifically provided that Mr. S was an independent contractor and that neither he, nor the employees who drove his trucks, were employees of FTS. Section 406.121(3) provides that a motor carrier is a person who operates a motor vehicle over a public highway in the state to provide a transportation service or contracts to provide that service. Section 406.121(4) provides that an owner operator provides a transportation service under contract for a motor carrier and that an owner operator is an independent contractor. Section 406.122(a)(2) states that a person "hired to perform the work or provide the service as an employee of a person operating as an independent contractor" is not an employee of the motor carrier for purposes of workers' compensation insurance coverage. In addition, subsection (c) of Section 406.122 states that neither the owner operator, nor his employees, are employees of the motor carrier "if the owner operator has entered into a written agreement with the motor carrier that evidences a relationship in which the owner operator assumes the responsibilities of an employer for the performance of work." As the hearing officer noted, the testimony and documentary evidence demonstrate that Mr. S was an owner operator and an independent contractor under Section 406.121. Thus, the claimant, who was hired to perform the work or provide the services, of Mr. S, an independent contractor, was likewise not an employee of FTS under Section 406.122. Thus, the hearing officer properly determined that the claimant was an employee of an independent contractor at the time of his injury and thus, did not sustain a compensable injury within the meaning of the 1989 Act.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge