APPEAL NO. 000148

This case returns, having been remanded by our decision in Texas Workers' Compensation Commission Appeal No. 992079, decided November 5, 1999, for further consideration and development of the evidence concerning the existence of "state law" which "mandate[d]" that the respondent (claimant), a special education teacher for the appellant (self-insured) at the time of her compensable injury on _____, be paid over a 12-month period for the services she provided during the 10-month period of her employment contract. At the contested case hearing, claimant had contended that "state law" required that her 10-month employment contract be paid out over 12 months and the hearing officer in his previous Decision and Order so found, concluding that claimant is not a seasonal employee for purposes of Section 408.043. On remand, the hearing officer provided the parties with an opportunity to provide him with briefs "identifying the statute or regulation, if any, that required Claimant to accept a contract designating a 12-month salary payment for a 10-month term of employment." In his decision on remand, the hearing officer states that neither party identified any such statute or regulation, that his conclusion of law in the prior Decision and Order (that claimant is not a seasonal employee for purposes of Section 408.043) was erroneous, and that claimant did, in fact, fall squarely under the precedents of Texas Workers' Compensation Commission Appeal No. 92688, decided February 5, 1993, and Texas Workers' Compensation Commission Appeal No. 93980, decided December 14, 1993. The hearing officer concluded that claimant was a seasonal employee and that her adjusted average weekly wage is $0.00 for the period from May 26 to August 8, 1999. This determination has not been appealed and has become final by operation of law. Section 410.169. The self-insured has requested our review for the limited purpose of reforming two of the findings of fact. The file does not contain a response from claimant.

DECISION

Affirmed as reformed.

Our decision in Appeal No. 992079, *supra*, contains a detailed recitation of the evidence which need not be repeated for this decision.

In the Decision and Order on remand the hearing officer made the following factual finding and also adopted and incorporated Findings of Fact Nos. 3 - 5 from his previous Decision and Order signed on September 2, 1999. The self-insured seeks our reform of the current Finding of Fact No. 2 and of the adopted and incorporated finding of fact, as follows:

FINDINGS OF FACT

2. The Claimant was not required by any state law to accept a contract providing for an employment term of <u>12 months</u> paid out over a 12-month period. [Emphasis supplied.]

3. The Claimant's employment contract provided that her remuneration be paid over a 12-month period, as required by state law. [Emphasis supplied.]

As mentioned in our decision in Appeal No. 992079, *supra*, a document accompanying claimant's employment contract stated as follows: "Number of months employed: 10, Required days of service: 187," and claimant testified to signing employment contracts annually which required her to provide services for a number of days over a 10-month period. Given this evidence and the absence of any opposition by claimant, we see no basis for refusing to grant the requested relief and reform Finding of Fact No. 2 to change the reference to the employment term from "12 months" to "10 months."

The self-insured also requests the reformation of Finding of Fact No. 3 to delete the words emphasized above for the obvious reason that, as the hearing officer stated in his remand decision, neither party was able to identify any statute which "required the Claimant to accept a full-year pay schedule for a partial-year employment contract." Again, we see no basis for refusing to grant the requested relief.

We affirm, as reformed, the hearing officer's Decision and Order on remand.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge