

APPEAL NO. 001230

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 May 10, 2000. The hearing officer determined that the respondent (claimant) is entitled to all rights and remedies under the 1989 Act. The appellant (carrier) appealed, contending that the hearing officer erred in determining that: (1) claimant's agreement to waive his rights under Texas workers' compensation laws is void and (2) claimant is entitled to all rights and remedies under the 1989 Act. The claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that: (1) claimant's agreement to waive his rights under Texas workers' compensation laws is void, and (2) claimant is entitled to all rights and remedies under the 1989 Act. Carrier asserts that the parties to claimant's employment contract signed a choice of law provision that is enforceable.

Section 406.035 states that, "[e]xcept as provided by this subtitle, an agreement by an employee to waive the employee's right to compensation is void." Section 401.011 contains the following definitions:

- (5) "Benefit" means a medical benefit, an income benefit, a death benefit, or a burial benefit based on a compensable injury.

* * *

- (10) "Compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle.

- (11) "Compensation" means payment of a benefit.

In an "Application for Safety Clearance," signed by claimant, it states:

[O]nce an offer of employment is made in Salt Lake City, I will be considered a Utah employee for wage, employment, and workers' compensation purposes.

Claimant also signed a document entitled "Employment Policies," which stated, in relevant part:

1. I will be bound by the laws of the State of Utah in all respects relating to the employer/employee relationship. . . . Jurisdiction for the resolution of any and all employer/employee issues is [in Utah]. . . .
2. I understand that I am governed by Utah Workers' Compensation and Unemployment compensation.

Claimant signed a "Pre-employment Checklist and Understanding" which stated, in pertinent part:

I am bound by the law of the state of Utah in all respects relating to the employer/employee relationship[,] [i]ncluding specifically benefits relating to workers' compensation and unemployment.

Carrier apparently contends that, in the agreements signed by claimant, he gave up his rights under Texas workers' compensation law and, instead, agreed to look to Utah law, only, regarding any available remedy, in lieu of workers' compensation benefits under the 1989 Act. We will assume, without deciding, that that is true for the purposes of this appeal. Applying the definitions from the 1989 Act set forth above, we construe Section 406.035 to mean that if an employee agrees to waive the employee's right to compensation or benefits under the 1989 Act, this agreement is void. To the extent that the agreements signed by claimant constitute an agreement to waive claimant's rights to Texas workers' compensation benefits, this is prohibited under Section 406.035.

Carrier asserts that the parties were entitled to agree to choice of law provisions, and that the Restatement (second) of Conflict of Laws (the Restatement) applies to permit enforcement of the "choice of law" provisions. However, the Texas Legislature enacted Section 406.035 and we will apply it in this case over a general provision in the Restatement. In any case, Section 187 of the Restatement concerns what law governs the parties' "contractual rights and duties." The Restatement concerns which jurisdiction's law will "govern construction and enforcement" of a contract. Claimant's claim for workers' compensation involves Texas statutes, not a contract between claimant and carrier. There is no contract between carrier and claimant and carrier was not a party to the contract between claimant and employer. We note that there was also no agreement with the employer on the principal location of claimant's employment, so Section 406.073 did not apply. We perceive no error in the hearing officer's decision. In affirming, we note that the parties agreed that claimant met the requirements regarding extraterritorial coverage under Section 406.071 and also that there was no issue at the CCH regarding election of remedies.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Alan C. Ernst
Appeals Judge