APPEAL NO. 001688

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 8, 2000. The hearing officer determined that: (1) for the purposes of workers' compensation insurance, the employer for respondent (claimant) on _____, was the (subcontractor); (2) claimant sustained a compensable injury on _____, as a result of an electrical shock; (3) claimant had disability from December 6, 1999, through the date of the hearing; and(4) appellant (carrier 1) provided workers' compensation insurance coverage for subcontractor on _____. Carrier 1 appealed these determinations on sufficiency grounds. Claimant and respondent (carrier 2) both responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier 1 contends that the hearing officer erred in determining that claimant was an employee of subcontractor. Claimant testified that: (1) he was hired by subcontractor as a carpenter and was later promoted to be a supervisor; (2) claimant was hired to work on the job site of the (general contractor), as well as on other job sites; (3) he was paid by the hour; (4) he did not furnish his own tools; (5) he was given a list of jobs that needed to be done; and (6) he was told what hours he would be working. After reviewing the record, we conclude that the hearing officer's determination that claimant was an employee of subcontractor is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Carrier 1 contends the hearing officer erred in determining that claimant sustained a compensable injury. Carrier 1 complains that the medical evidence does not support claimant's assertions of injury and that the credible evidence did not show that an incident occurred on _____. Carrier 1 also contends that there was no "disabling injury" and that the evidence did not show that claimant had disability from December 6, 1999, through the date of the hearing, as determined by the hearing officer.

Claimant testified that on _____, he tripped, hit a "box" on the wall, and went "into 360 volts." Claimant indicated that he lost consciousness and that he has experienced problems with his back, ankle, and neck; psychological problems; and headaches due to this incident. He testified that he was released from the hospital after "a couple days"; that he did not work for about one month; that he tried to go back to work; that he worked answering phones in subcontractor's office; that he stopped working December 6, 1999, due to pain and other problems after this injury; and that he has not returned to work. Claimant's medical records note that claimant was status post electrical burn, that he sustained burns to his toe, that he had an abnormal EKG, and that myocardial infarction was ruled out. Claimant's testimony supports the hearing officer's

determinations regarding injury and disability. The hearing officer's determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

Finally, carrier 1 contends the hearing officer erred in determining that carrier 1 provided workers' compensation coverage that covered claimant on _____. Carrier 1 asserts that claimant was not "enrolled," so he was not covered. The hearing officer discusses the facts in his decision and order. Briefly, there was evidence that general contractor contracted with subcontractor for building construction services. Claimant was an employee of subcontractor and said he acted as a supervisor on the job site. When receiving bids for the construction work, general contractor asked for bids from subcontractors that assumed that the subcontractor would not be providing workers' compensation insurance to cover the subcontractor's employees. This is because general contractor had a program (the Program) under which general contractor was the one to provide workers' compensation insurance coverage. Under Section 406.123, general contractor was permitted to, and did, enter into a written agreement under which general contractor provided workers' compensation insurance coverage to subcontractor and the employees of subcontractor.

An Insurance Carrier's Notice of Coverage/Cancellation of Coverage (TWCC-20) stated that carrier 1 was the carrier on a policy, with subcontractor listed as the insured, and stating effective dates of "05-15-98 to 05-01-99." It stated that the estimated number of employees was "1." Carrier 1 did not deny that a (carrier 1 policy) existed, or that it did not cover subcontractor. Instead, Carrier 1 asserted that no one had acted to "enroll" claimant under the carrier 1 policy, so there was no coverage for claimant. The carrier 1 policy is not in the record. As noted by the hearing officer there was no evidence that the carrier 1 policy excluded claimant and no evidence of policy exclusions related to "enrollment." Carrier 1 asserted that one of general contractor's manuals, which was part of the contract between general contractor and subcontractor, stated that there was no coverage without enrollment. However, it was not asserted that this manual was part of the carrier 1 policy. Further, this manual is also not in the record.

Because it is a government entity, general contractor was to ensure that there was workers' compensation insurance, in some form or fashion, that covered those employed on the job site. Section 406.096. There was evidence that it did so and that the policy that covered subcontractor was the carrier 1 policy. Carrier 1 did not establish that this policy did not cover claimant on _____. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

Carrier 1 contends that the carrier 1 policy was not the primary policy providing workers' compensation insurance coverage for claimant. General contractor's Program states that the Program participants shall carry workers' compensation insurance for their employees performing work at locations other than the job site. Subcontractor did have a workers' compensation policy with Carrier 2. However, we note that, in its brief, carrier

1 admits that, “That is not to say that if a policy had been appropriately issued by [carrier 1] and all the conditions precedent satisfied then [carrier 1's] policy would not be primary. Indeed it would be under the circumstances.” Carrier 1 also stated that, “a policy of insurance covering all the **enrolled** workers on this particular job site was issued by carrier 1 (emphasis in original).” We perceive no error in the hearing officer’s determinations.

We affirm the hearing officer’s decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge