

APPEAL NO. 002414

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 September 21, 2000. With regard to the issues before her, the hearing officer determined that the appellant (claimant) was an employee of (employer) on June 17, 1999, and that the respondent (carrier) was liable for workers' compensation benefits due the claimant. The hearing officer further determined that the claimant was a special employee of (Company C) and that respondent (Carrier P), Company C's workers' compensation carrier, was not liable for workers' compensation benefits due the claimant.

The claimant appealed, essentially arguing that he was a borrowed servant by Company C and that Carrier P should pay workers' compensation benefits, notwithstanding that the carrier has already paid those benefits. The claimant argues that he was a borrowed servant of Company C because Company C had the right to direct and control the manner and method of work of employees furnished to Company C by the employer. The claimant requests that we reverse the hearing officer's decision and find that the claimant was the borrowed servant of Company C and that Carrier P is liable for workers' compensation benefits. Both the carrier and Carrier P file responses urging affirmance and giving reasons therefore.

DECISION

Affirmed.

The claimant testified that she sought and obtained employment with the employer, a temporary employment agency, on April 18, 1999, and was subsequently assigned to work on the "jug line" at Company C. The claimant testified that her pay was set by the employer and that she was given an orientation of her duties at Company C by her supervisor, HG, who was an employee of the employer. The claimant testified that HG worked the day shift; that HG had an office at Company C with the sign "[Employer] Supervisor"; that HG had the authority to hire and fire; and that the employer also had a "lead person" on all shifts and that BB was the employer's lead person on the night shift where the claimant was working. The claimant testified that BB had the authority to direct work and supervise, but did not have the authority to hire and fire. The Company C supervisor was RC. The claimant received her pay from the employer. The claimant was eventually laid off by HG, acting for the employer.

The claimant testified how, on _____, while working the night shift, there was an assembly line spill and the claimant slipped and fell, sustaining a left wrist fracture. The carrier accepted liability and has paid workers' compensation benefits. The claimant filed a third-party tort suit against the employer and Company C. The defendants apparently defended on the basis that the employers had workers' compensation coverage, which was the claimant's exclusive remedy.

In evidence is a contract between the employer and Company C, in effect long before the date of injury, which provides that “personnel provided by the CONTRACTOR [employer] shall be COMPANY'S [Company C] special employees and CONTRACTOR'S [employer] general employees.” The contract goes on to state that Company C:

[A]cknowledges that all personnel furnished by CONTRACTOR [employer] shall be conclusively deemed to be the employees of CONTRACTOR [employer] for purposes of Workers Compensation coverage, employee benefits, liability for the payment of Workers Compensation benefits, and the protections and limitations of liability afforded an employer pursuant to the Workers Compensation laws of the State of Texas.

The hearing officer, in the discussion portion of her decision, commented:

Since the contract in question undisputedly indicates that [employer] and [Company C] intended that [employer] would be the employer for workers' compensation purposes and that [employer's] workers' compensation Carrier would be liable for any workers' compensation benefits due employees furnished to [Company C] by [employer] pursuant to their contract, the Commission [Texas Workers' Compensation Commission] should implement the parties clearly expressed intent. This analysis of the situation is supported by the fact that Claimant has chosen to retain the workers' compensation benefits paid to her by [employer's] workers' compensation insurance Carrier, a clearly improper action on her part had she not believed herself entitled to receive such benefits as an employee of [employer] for workers' compensation purposes.

The claimant, in her appeal, cites Texas Workers' Compensation Commission Appeal No. 981848, decided September 21, 1998, where the hearing officer found two employers to be co-employers and the Appeals Panel reversed and remanded to be controlling. We distinguish that case from the instant case in that in Appeal No. 981848, the claimant would not stipulate that one of the two employers was his employer and that:

None of the parties offered into evidence documents concerning the relationship of Employer 1 and Employer 2; whether Employer 2 is a licensed staff leasing services company; and which employees, including those that the claimant testified supervised him, worked for which employer.

That is certainly not the situation in this case. The Appeals Panel, in Appeal No. 981848, reversed the hearing officer, stating that there was insufficient evidence “to support the finding of fact that at the time the claimant was injured Employer 1 and Employer 2 were co-employers” We hold Appeal No. 981848 clearly distinguishable from the instant case.

The claimant complained that the hearing officer “*sua sponte*” raised the issue of whether the carrier could seek reimbursement from Carrier P for the benefits paid to the claimant. While we agree that was not an issue, we cannot agree that the hearing officer's inquiry into that matter constituted error, much less reversible error. The claimant contends that she was a borrowed servant and that a carrier should not be allowed to enter into “private side agreements” to “permit a carrier to escape liability.” In this case, the carrier has accepted liability and workers' compensation benefits have been paid. In Texas Workers' Compensation Commission Appeal No. 941124, decided October 6, 1994, a case involving somewhat similar global issues, we stated:

[I]n essence, claimant is asking for double recovery, by requesting benefits from Carrier A after receiving benefits from Carrier H. In Texas Workers' Compensation Commission Appeal No. 93531, decided August 10, 1993, the Appeals Panel referred to Texas Workers' Compensation Commission Appeal No. 92556, decided December 2, 1992, for the “general principle” that “a claimant should receive the benefits he or she is entitled to under the law—no more or no less.” We adhere to that general principle.

The claimant contends that she was the borrowed servant of Company C; however, the testimony and documentary evidence clearly shows otherwise. The claimant was sent to Company C by the employer to work a specific job, the “jug line.” The claimant was being supervised by an employer lead person, BB, and there is no evidence that Company C or its supervisor, RC, had caused the claimant to deviate from the assignment given her by the employer, being to work the “jug line” at Company C. Neither RC nor Company C was requesting that the claimant perform any different job from the job that she had been assigned by the employer.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Susan M. Kelley
Appeals Judge