

APPEAL NO. 002482

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 September 26, 2000. The issues at the CCH were as follows:

1. Does the [Texas Workers' Compensation] Commission have jurisdiction to adjudicate this claim?
2. Was \_\_\_\_\_ [LJM], \_\_\_\_\_ [SS], or \_\_\_\_\_ [DS] the employer of the employee for the purposes of the [1989 Act] on the date of injury?
- 3.
4. Is [the respondent/cross-appellant] [Carrier R] or [the respondent] [Carrier E] liable for workers' compensation benefits on the date of injury?

The hearing officer resolved the disputed issues by determining that the Commission had jurisdiction to adjudicate the claim; that LJM was the employer of the appellant/cross-respondent (claimant) on the date of injury, \_\_\_\_\_; and that Carrier R is liable for workers' compensation benefits on the date of injury. While there was no issue regarding whether the claimant had sustained a compensable injury, it appears undisputed that the claimant sustained an injury in the course and scope of his employment on \_\_\_\_\_. The claimant appealed the hearing officer's determinations that the Commission had jurisdiction to adjudicate the claim and that LJM was the employer for the purposes of the 1989 Act, asserting that his employer was DS and that neither Carrier E nor Carrier R provided workers' compensation insurance to his employer on the date of injury. Carrier R appealed the hearing officer's determination that it was the liable carrier for workers' compensation benefits arising out of an injury on \_\_\_\_\_, asserting that Carrier E was the workers' compensation insurer for LJM and SS on the date of injury. Carrier E asserts that the hearing officer's decision is correct in all respects and requests that the decision and order be affirmed.

DECISION

Affirmed.

CLAIMANT'S EMPLOYER ON \_\_\_\_\_

On \_\_\_\_\_, the claimant sustained serious injuries in a fall while at work. Although the claimant asserts that he was the employee of DS at the time of his injury, evidence was adduced at the hearing that DS had entered into a contractual agreement with LJM on December 23, 1997, wherein LJM would provide services and employees to DS in accordance with Title 2, Chapter 91, Texas Labor Code (Staff Leasing Act). Section 91.042(c) of the Staff Leasing Act provides as follows:

For workers' compensation insurance purposes, a license holder and the license holder's client company shall be coemployers. If a license holder elects to obtain workers' compensation insurance, the client company and the license holder are subject to Sections 406.034 and 408.001.

There was no dispute that LJM was a valid license holder under the Staff Leasing Act. Nor was there any dispute that a valid contract existed between DS and LJM, that the contract was entered into in accordance with the Staff Leasing Act, and that the contract between DS and LJM was in full force and effect on \_\_\_\_\_. We perceive no error in the hearing officer's determination that the claimant was an employee of LJM on the date of injury, although it is more accurately stated that the claimant was an employee of both LJM and DS.

#### IDENTITY OF THE CARRIER LIABLE FOR WORKERS' COMPENSATION BENEFITS PAYABLE TO LJM EMPLOYEES ON \_\_\_\_\_

Both the claimant and Carrier R appeal the hearing officer's determination that Carrier R provided workers' compensation coverage for LJM employees on \_\_\_\_\_. The tug of war between Carrier R and Carrier E over which carrier is liable, if in fact liability exists, for work-related injuries sustained by LJM employees on or about \_\_\_\_\_, has been the subject of litigation between LJM, SS, Carrier R, and Carrier E in four previous hearings before the Commission. In each previous case, a hearing officer has determined that Carrier R is the proper workers' compensation carrier for LJM employees. In Texas Workers' Compensation Commission Appeal No. 990224, decided March 8, 1999; Texas Workers' Compensation Commission Appeal No. 990209, decided March 10, 1999; Texas Workers' Compensation Commission Appeal No. 990215, decided March 10, 1999; and Texas Workers' Compensation Commission Appeal No. 990225, decided March 16, 1999, Judge Knapp, with Judge Potts and Judge Kilgore concurring, determined that Carrier R provided workers' compensation insurance for employees of LJM on April 6, 1998; December 10, 1997; January 19, 1998; and March 4, 1998, respectively. Since the Appeals Panel has determined that Carrier R provided workers' compensation insurance for LJM on March 4, 1998, and April 6, 1998, we concur with the reasoning of the foregoing decisions and find no rationale for disturbing the hearing officer's determination herein that Carrier R provided workers' compensation insurance for LJM on \_\_\_\_\_.

#### THE COMMISSION'S JURISDICTION TO ADJUDICATE THE CLAIM

The core issue at stake between the parties before the Commission in this matter is whether the claimant is potentially entitled to benefits under the provisions of the 1989 Act or whether the claimant is entitled to proceed with litigation asserting his rights at common law. There is no dispute that SS contracted with Carrier E to provide workers' compensation benefits for its employees on \_\_\_\_\_. There is no dispute that LJM provided workers' compensation benefits for its employees on \_\_\_\_\_. And, as set forth above, DS was a coemployer with LJM on \_\_\_\_\_, and the claimant was their employee. The 1989 Act provides, in pertinent part:

Sec. 406.031. LIABILITY FOR COMPENSATION. (a) An insurance carrier is liable for compensation for an employee's injury without regard to fault or negligence if:

- (1) at the time of injury, the employee is subject to this subtitle; and
  - (2) the injury arises out of and in the course and scope of employment.
- (b) If an injury is an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee under this subtitle. [Citation omitted.]

\* \* \* \*

Sec. 406.034. EMPLOYEE ELECTION. (a) Except as otherwise provided by law, unless the employee gives notice as provided by Subsection (b), an employee of an employer waives the employee's right of action at common law or under a statute of this state to recover damages for personal injuries or death sustained in the course and scope of the employment.

- (b) An employee who desires to retain the common-law right of action to recover damages for personal injuries or death shall notify the employer in writing that the employee waives coverage under this subtitle and retains all rights of action under common law. The employee must notify the employer not later than the fifth day after the date on which the employee:
- (1) begins the employment; or
  - (2) receives written notice from the employer that the employer has obtained workers' compensation insurance coverage if the employer is not a covered employer at the time of the employment but later obtains the coverage.

\* \* \* \*

Sec. 408.001. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. (a) Recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance coverage or a legal beneficiary against the employer or an agent or employee of the employer for the death of or a work-related injury sustained by the employee.

The Commission is charged with administering the provision of workers' compensation benefits to employees in the State of Texas. The 1989 Act operates not only to facilitate the efficient provision of benefits to employees in this state, but also operates to protect employers. In order to fulfill the mission set for the Commission by the legislature of the State of Texas, the Commission is vested with primary jurisdiction over workers' compensation matters. See In re Luby's Cafeterias, Inc., Relator, 979 S.W.2d 813 (Tex. App.-Houston [14th Dist.] 1998). The determination of the rights, duties, obligations, and status of the parties herein is within the purview of the 1989 Act. The issues before the hearing officer revolved around the provision, or denial, of medical and income benefits under the 1989 Act. The hearing officer did not err in finding that the Commission had jurisdiction to adjudicate the claim.

Having found the evidence sufficient to support the determinations of the hearing officer and no reversible error in the record, we affirm the hearing officer's decision and order.

---

Kenneth A. Huchton  
Appeals Judge

CONCUR:

---

Gary L. Kilgore  
Appeals Judge

---

Philip F. O'Neill  
Appeals Judge