

APPEAL NO. 011002
FILED JUNE 5, 2001

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 April 4, 2001. The issues were: (1) Did the appellant/cross-respondent (claimant) sustain a compensable injury on _____? (2) Was the claimant an employee of (employer) at the time of the claimed injury? and (3) Has the claimant had disability? The hearing officer found that the claimant did not injure any part of his body while working for the employer, and therefore has not had disability, but that he was, on _____, the employee of the employer for purposes of workers' compensation coverage. The claimant appeals on the basis that he did indeed fall, that the medical records indicate he had an injury, and that he did have disability. The respondent/cross-appellant (carrier) appealed the finding of fact that the claimant returned to the employer's premises as part of the orderly termination of the employment relationship; and secondly, that the claimant was an employee for purposes of workers' compensation coverage.

DECISION

Affirmed.

On _____, the claimant had been terminated and escorted from the employer's premises. He returned to the premises of the employer within a few minutes because, as he testified, he had forgotten one of his personal possessions. There was evidence that when his manager saw him back on the premises, she again began escorting him out, and there was some discussion of his final paycheck. Evidence conflicts as to whether the claimant was pushed, or fell, or simply sat down quickly on the stairs within a lobby area. Evidence conflicted as to whether he was injured. The hearing officer made a specific finding that the "claimant returned to the premises of [employer], as part of the orderly termination of the employment relationship," in apparent reference to Texas Workers' Compensation Commission Appeal No. 000538, decided May 8, 2000. The general rule is that one is not an employee after termination; however, the exception is when the employee is required, or reasonably believes that he is required, to remain at or to return to the employer's premises for his final paycheck or to take care of some other duty incidental to the termination. INA of Texas v. Bryant, 686 S.W.2d 614 (Tex. 1985). Whether the claimant sustained an injury on _____, was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The testimony of a claimant as an interested party only raises an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). He resolved contradictions in the evidence against the claimant. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715

S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the determinations of the hearing officer that the claimant was an employee of the employer at the time of the alleged injury, and did not sustain a compensable injury on _____.

In that we are affirming the hearing officer's decision that claimant had not sustained a compensable injury claimant cannot, by definition in Section 401.011(16), have disability.

The hearing officer decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge