APPEAL NO. 011433
FILED AUGUST 09, 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 May 30, 2001. The hearing officer determined that the respondent (claimant) was an employee of Employer 1, for purposes of workers' compensation, on _____; that the claimant sustained a compensable injury on that date; and that the claimant had disability from November 15, 2000, through May 30, 2001. The appellant (carrier) has appealed these determinations on sufficiency of the evidence grounds. The claimant has not responded to the appeal.

DECISION

Affirmed.

The claimant began working for Employer 1 on July 21, 2000. Claimant's Exhibit No. 3, Employer 1's Policies and Procedures Statement, signed by the claimant on July 21, 2000, contains the following relevant provisions:

> 3. I understand and agree that, as an [Employer 1] associate assigned to a client organization, I am the employee of [Employer 1] and not the client. As such, I am not eligible for client benefit programs, and I hereby agree to waive and release any right to participate or receive benefits from any retirement, insurance, ERISA, stock option, or any benefit plan offered or available to full time employees of any client organization [Employer 1] assigns me to and understand that I am entitled only to the employment benefits offered to me by [Employer 1]. [Emphasis in original.]
>
> 4. I hereby waive, release, and hold harmless any [Employer 1] client organization I am assigned to from any liability for injuries covered by Worker's [sic] Compensation statutes and I understand that [Employer 1], as my employer, carries Workers' Compensation insurance for me while I am on assignment as an [Employer 1] Associate at client organizations.
>
> * * * * *
>
> 16. I understand that I can be terminated from employment only by [Employer 1] and not a client company. Also, I understand that the completion of an assignment or release by a client, even for failure to meet performance standards, is not a termination of employment with [Employer 1].

The claimant was sent to work at Employer 2, the client of Employer 1, as a forklift operator, and worked there continuously until November 2, 2000. There was evidence presented that the claimant was off work from November 3 through November 13, 2000, due to a nonwork-related bleeding ulcer, but that he returned to work at Employer 2 on _____. He worked approximately 13.5 hours that day, and injured his back after working 12 hours. He reported the injury to his supervisor at Employer 2 that day, and he reported the injury to Employer 1 on November 15, 2000. The claimant was advised by Employer 1 on November 15, 2000, that, due to an unrelated accident which had occurred on Employer 1's premises during the time the claimant was off work, Employer 2 sent all of Employer 1's employees back to Employer 1. This was the first time that the claimant had heard that he was no longer working at Employer 2. No one had advised him of that situation during the workday on _____. The claimant was taken off work when he went to the doctor on November 15, 2000, and did not return to work for either Employer 1 or Employer 2.

There was sufficient evidence in the record to support the hearing officer's determinations that the claimant was the employee of Employer 1 on _____, for workers' compensation purposes; that the claimant sustained a compensable injury on that date; and that the claimant had disability from November 15, 2000, through May 30, 2001. These were all factual determinations, which are within the province of the hearing officer. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp

Appeals Judge