

APPEAL NO. 011958  
FILED OCTOBER 2, 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 initially held on November 30, 2000, with hearing officer 1 presiding as the hearing officer. In Texas Workers' Compensation Commission Appeal No. 002974, decided February 1, 2001, the Appeals Panel remanded the case back for reconstruction of the record in that there were occasions where the audio tapes were very faint and other times had gaps where the testimony could not be heard at all (especially in the first of the original three tapes). Apparently at some time thereafter hearing officer 1 and the parties got together and an unofficial transcript of the audio tapes was prepared by the carrier. Subsequently hearing officer 1 became unavailable and (hearing officer) (referred to as hearing officer) was assigned to hear the remand. A hearing on remand was held on July 19, 2001, with the hearing officer presiding. At that time the parties were identified and the issues defined. By agreement of the parties and the hearing officer it was decided that the hearing officer would listen to the audio tapes using the unofficial transcript to supplement the tapes.

With regard to the three issues before her the hearing officer determined that A Temps Inc. (company) was not the appellant's (claimant) employer for purposes of the 1989 Act, that the claimant had not sustained a compensable injury on \_\_\_\_\_, and that the claimant did not have disability.

The claimant appeals contending that she was an employee of the company when she slipped and fell at (hospital) and that the hearing officer's decision is against the great weight and preponderance of the evidence. The respondent (carrier) urges affirmance. The claimant responds to the carrier's response contending the carrier's response was not timely filed and should not be considered. The carrier replied that its response was timely based on the amendment to Section 410.202(b) by article 12 of HB 2600 effective June 17, 2001.

DECISION

Affirmed.

The carrier's response was timely pursuant to Section 410.202(b) as amended by HB 2600 effective June 17, 2001.

At the outset we will note that the testimony and documentary evidence was conflicting and contradictory. One of the undisputed facts was that the claimant had been employed by the company, a temporary staffing service, and had been assigned to work as a "coder" in the medical records section of the hospital from June to mid-September 1999 when she left for personal reasons. The claimant testified that some time later she called the coding manager at the hospital to see if she could return to work (denied by the coding manager) and was referred to her supervisor at the company. The claimant

testified that she spoke with the supervisor who approved her return to the hospital (denied by the supervisor) and that she worked for the company as a coder at the hospital on November 1, 1999 (unclear and disputed). The claimant testified that she returned to the hospital on \_\_\_\_\_, for her second day at work and she slipped and fell, injuring her left foot, left hip, left shoulder blade, and back. Medical documentation supports a left ankle injury but the hearing officer specifically found that the claimant did not injure her left shoulder and low back on \_\_\_\_\_.

The crux of the case is whether the claimant had returned to work with the company and had been assigned to work at the hospital on \_\_\_\_\_. The testimony and documentary evidence on the subject were certainly conflicting. The hearing officer resolved the conflicts against the claimant. Section 410.165(a) provides that the hearing officer, as a 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). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

In that we are affirming the hearing officer's determinations that the claimant was not employed by the company on \_\_\_\_\_, and that the claimant did not sustain a compensable injury, the claimant cannot by definition in Section 401.011(16), have disability.

We have reviewed the complained-of determinations and concluded that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. 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 hearing officer's decision and order

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET.  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Michael B. McShane  
Appeals Judge