APPEAL NO. 012510
FILED NOVEMBER 27, 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 August 28, 2001, with the record closing on September 21, 2001. On the sole issue before him, the hearing officer determined that the decedent was in the course and scope of his employment at the time of his death on _____. The appellant (carrier) appeals the determination on sufficiency grounds. The respondent (claimant) urges affirmance.

DECISION

Affirmed as reformed.

The decedent was employed as an air conditioning/heating system (AC/heating) technician by the employer. It is undisputed that the claimant suffered a fatal accident on _____, when he was electrocuted working on an AC/heating unit. The crucial point at issue was whether the decedent was in the course and scope of his employment for the employer or whether he was moonlighting a second job on his own at the time of his death. There was conflicting evidence which could lead to differing conclusions on this matter. The hearing officer recited that the parties stipulated in Finding of Fact No. 1(d) that "Decedent suffered an injury in the course and scope of his employment on _____ which resulted in his death."

The carrier asserts that Finding of Fact No. 1(d) is incorrect because the carrier never stipulated that the "Decedent suffered an injury in the course and scope of his employment on _____ which resulted in his death." Our review of the record reveals that the parties stipulated only that the decedent suffered a fatal accident on _____, but did not stipulate that the injury occurred in the course and scope of his employment. As written, Finding of Fact No. 1(d) appears to be in the nature of an administrative error. It is clear from the record of the hearing that the hearing officer did not rely on Finding of Fact No. 1(d) in reaching a determination that the decedent was in the course and scope of his employment but understood the precise terms of the parties' stipulation and proceeded with a hearing on the issue of whether the decedent's fatal injury occurred in the course and scope of his employment. Finding of Fact No. 1(d), therefore, does not constitute reversible error. Notwithstanding, Finding of Fact No. 1(d) is reformed to accurately reflect the parties' stipulation, as follows: "Decedent suffered a fatal accident on _____."

The carrier further asserts that the hearing officer's determination is against the great weight and preponderance of the evidence. Whether the decedent's fatal injury arose out of and in the course and scope of his employment was a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000074, decided February 25, 2000. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and

inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the testimony of the claimant's witnesses, the hearing officer could find, as he did, that the decedent was on a service call for the employer at the time of his fatal injury. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer is affirmed as reformed.

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

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge