

APPEAL NO. 012558  
FILED DECEMBER 20, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 011551, decided August 16, 2001. We had remanded the case for reconstruction of the record, as a significant portion of the audiotape of the original was unintelligible. A contested case hearing on remand was held on September 25. With regard to the issue before him, the hearing officer determined that on the date of injury the respondent (claimant herein) was an employee of the appellant's (carrier herein) insured and not an independent contractor. The carrier appeals, contending that the hearing officer applied the wrong section of the 1989 Act in deciding the case. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

We affirm.

The claimant had an arrangement with the (insured) to install a ceiling at a church. There was conflicting evidence concerning the extent of the insured's right of control over the claimant's work at the church. The hearing officer based his decision on a finding that the insured had retained the right to exercise control over the details of the work even though it failed to exercise such control. This was essentially a factual determination. As an appellate-reviewing body, we will not disturb the challenged factual findings of a hearing officer unless they are 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find that to be the case here because, while the evidence as to right of control was conflicting, there was evidence that the insured retained the right of control over the details of the work.

The carrier argues that the hearing officer erred in applying Sections 406.141 and 406.142 in deciding this case when he should have applied Section 406.121, since he found that the site on which the claimant was working was not a residential structure and apparently exceeded three stories or 20,000 square feet in area. The carrier argues that the hearing officer should therefore have applied Section 406.121. However, the carrier fails to show how applying this section would have dictated a different result. We, therefore, find any error in this regard harmless. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The decision and order of the hearing officer are affirmed.

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  
211 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Judge