APPEAL NO. 013127
FILED JANUARY 25, 2002

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 October 19, 2001. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) was an independent contractor at the time of the claimed injury; that the claimant did not sustain a compensable injury in the course and scope of employment; and that the claimant did not have disability. The claimant appealed, contending that these determinations are not supported by sufficient evidence and are against the great weight of the evidence. The respondent (carrier) replied that the evidence established that the claimant was an independent contractor at the time of the accident and as a result did not sustain an injury or disability in the course ans scope of employment.

DECISION

Affirmed.

The claimant worked as a physician providing services in a facility located in (city 1), Texas. In evidence was a temporary physician agreement signed by the claimant in November 2000, which stated that "the parties hereto intend that the relationship created between them by this agreement is one of Independent Contractor." The agreement provided that the claimant was paid on a *per diem* basis; that the claimant was responsible for payment of all income taxes, including estimated quarterly payments; and that the claimant, in his professional judgment, was to select the means, manner, and method of rendering medical services. An addendum recited that the claimant would provide services from November 6, 2000, through May 7, 2001. The claimant testified that he was asked to temporarily relocate to (city 2), Texas, to provide services for a facility located there. An amendment to the agreement was in evidence, which modified the terms regarding the location where services were to be provided, the amount of compensation, and the location of payment. The amendment specified that all other terms of the agreement remain in full force and effect.

The claimant testified that there were two facilities in city 2, although all of the patient records were kept at a single facility. He testified that he injured his back on _____, when he was lifting records to transport to the other facility. The claimant contends that on _____, he was an employee rather than an independent contractor. He testified that in exchange for agreeing to cover the facility temporarily in city 2, he understood that he would be transferred to a major metropolitan area; however, he testified that no firm commitment or agreement regarding his future employment had been reached.

The claimant contends that the hearing officer erred in determining that he was an independent contractor rather than an employee. The applicable law in this regard is discussed in Texas Workers' Compensation Commission Appeal No. 950075, decided February 28, 1995, and Texas Workers' Compensation Commission Appeal No. 000105,

decided March 8, 2000. Whether an injured worker was an "employee" or an independent contractor is a question of fact, determined in part by considering right to control. Goodnight v. Zurich Insurance Co., 416 S.W.2d 626 (Tex. Civ. App.-Dallas 1967, writ ref'd n.r.e.). As the Appeals Panel noted in Texas Workers' Compensation Commission Appeal No. 91115, decided January 29, 1992, the 1989 Act (Section 401.012) defines "employee" as each person in the service of another under a contract of hire, express or implied, oral or written, but not including an independent contractor or employee of an independent contractor. We further noted that "the Texas Supreme Court has stated that the solution to the question of whether an injured person was an employee or independent contractor at the time of the injury is reached through determining whether the purported employer had the right of control over the work. [Citation omitted.]"

Sections 406.121(1), (2), and (5) define, respectively, a general contractor, an independent contractor, and a subcontractor. The Appeals Panel stated in Texas Workers' Compensation Commission Appeal No. 93110, decided March 26, 1993, that whether an individual is an employee or an independent contractor depends upon "whether the purported employer has the right to control the individual in the details of the work to be performed. [Citation omitted.]" This decision went on to state that "[w]here no contract between the parties establishes the employer's right to control the work, the employee-employer relationship may be established circumstantially by evidence of actual exercise of control. [Citation omitted.]" We noted that, in many respects, the 1989 Act's definition of independent contractor incorporates the common-law factors the courts have looked to in analyzing one party's right to control the details of another's work. We stated that such factors may include the independent nature of the worker's business; the worker's obligation to furnish the necessary tools, supplies, and materials to perform the job; the worker's right to control the progress of the work, except as to the final results; the time for which the worker is employed; the method of payment; whether the worker could come and go; whether income taxes were withheld; and whether the work required special skill. We further stated that it does not appear that each and every evidentiary factor in the statutory definition need be present and that each controversy involving whether an injured worker is an employee or independent contractor must be decided on its own particular facts and that, ordinarily, "no one feature of the relationship between the worker and the employer is determinative. [Citation omitted.]" Whether a claimant is an independent contractor or employee is generally a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 991200, decided July 22, 1999. There was evidence that the claimant continued to provide services and receive payment in the same manner he had prior to the expiration of the agreement. We have reviewed the evidence and the hearing officer's determinations, and we conclude that her 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); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer declared in her Statement of the Evidence that there was no real dispute between the parties that the claimant sustained a low back injury and became unable to work for a period of time due to the injury. However, the 1989 Act limits liability

for compensation to one who is an employee. Section 406.031(a); Texas Workers' Compensation Commission Appeal No. 91005, decided August 14, 1991.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **VIRGINIA SURETY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Terri Kay Oliver
Appeals Judge