

APPEAL NO. 020640
FILED APRIL 30, 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 (CCH) was held on December 13, 2001, and on February 7, 2002. The hearing officer determined that (1) the decedent sustained a compensable injury that resulted in his death on _____; and (2) the decedent's only beneficiary is the respondent (claimant/beneficiary). The appellant (carrier) appeals the injury determination on sufficiency grounds. The claimant urges affirmance. The hearing officer's beneficiary determination was not appealed by either party and is, therefore, final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the decedent sustained a compensable injury that resulted in his death on _____. The carrier essentially asserts that the fatal injury did not arise out of and in the course and scope of the decedent's employment, but that it was the result of personal animosity by a third person for reasons unrelated to the decedent's employment. This was a question of fact for the hearing officer to resolve. 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 evidence presented, we cannot conclude that the hearing officer's determination is 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 (Tex. 1986).

The carrier asserts error in the hearing officer's failure to make specific findings with regard to the elements of "course and scope of employment," *viz.*; whether the decedent was engaged in or about the furtherance of the affairs or business of the employer; and whether the activity is of a kind or character that has to do with and originates in the work, business, trade, or profession of the employer. See Section 401.011(12). Because the carrier contested the claimant's evidence on each of these elements at the CCH, the hearing officer would have done well to have made specific findings with regard to each element. However, in view of the hearing officer's finding of fact that the decedent was killed in the course and scope of his employment, findings on each element of "course and scope of employment" are clearly implied in favor of the claimant. Such implied findings, as indicated above, are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the self-insured is **BELL/GANDY'S, INC.** and the name and address of its registered agent for service of process is

**BILL R. MURPHY
201 UNIVERSITY AVENUE
LUBBOCK, TEXAS 79415.**

Edward Vilano
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

CONCUR IN RESULT:

Thomas A. Knapp
Appeals Judge