

APPEAL NO. 021142  
FILED JUNE 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 22, 2002, the hearing officer resolved the five disputed issues by concluding that at the time of the claimed injury of \_\_\_\_\_, respondent/cross-appellant (claimant) was an employee of Mr. R for workers' compensation purposes; that the claimant did sustain a compensable injury on \_\_\_\_\_; that appellant/cross-respondent (Carrier 1) is not relieved from liability under Section 409.002 because the claimant timely notified her employer pursuant to Section 409.001; that "[Carrier 1] did not dispute the compensability of the claimed injury by not [sic] contesting in accordance with [Section 409.021]"; and that the claimant had disability from the injury sustained on \_\_\_\_\_, from November 1, 2000, through May 16, 2001. Carrier 1, whom the hearing officer ultimately determined not to have liability for this claim, has filed a conditional appeal (conditioned on there being another appeal filed) challenging the sufficiency of the evidence to support the determination that it failed to timely dispute the compensability of the claimed injury. Respondent/cross-appellant Texas Mutual Insurance Company (Carrier 2) has filed an appeal challenging the sufficiency of the evidence to support the determinations that the claimant was the employee of Mr. R and that the claimant sustained a compensable injury and had disability. The claimant has filed an appeal challenging the sufficiency of the evidence to support the determination that her disability did not begin until November 1, 2000, and that it ended on May 16, 2001. She further asserts that "[t]he Hearing Officer's Conclusion that [Carrier 1] did not waive their right to contest the compensability of the Claimant's \_\_\_\_\_ injury was incorrect as a matter of law." Carrier 1 filed a response to the claimant's appeal contending that even though Carrier 1 was found not to have filed a dispute of compensability within 60 days of receiving written notice of the injury, the hearing officer correctly determined that Carrier 1 has no liability because it did not provide coverage to the employer. The claimant filed a response urging the correctness of the hearing officer's determination that she was not an independent contractor at the time of her injury, and stating that while she agrees with the determination that she was the employee of Mr. R, she would accept a determination that she was the employee of (company) or was a dual employee.

DECISION

Affirmed as reformed.

The claimant testified that on \_\_\_\_\_, while she and the two crew members she hired were installing a cornice on a garage roof, she slipped and fell, injuring her left knee; that she was taken to an emergency room for treatment and, because of this injury, has not been able to resume the physical work of installing cornices at job sites; that her crew continued working on that job and on others she obtained until sometime in late October 2000; and that she underwent surgery on the injured knee in March 2001. The claimant further testified that prior to \_\_\_\_\_, she was employed to install cornices

at another project site by the company, which was insured by Carrier 1; that on the injury date, she and her crew reported to a new job site as directed by the company's foreman; and that upon her arrival there, the foreman told her she would be working "under [Mr. R]" until such time as another contractor obtained insurance and reported to the job site, after which she would work for that entity. The record indicates that Mr. R failed to respond to a subpoena and that a transcript of his recorded statement was in evidence. In that statement, Mr. R essentially denies having any employer-employee relationship with the claimant on the date of her injury.

The hearing officer's Decision and Order contains a very complete recitation of the evidence adduced at the hearing and we are satisfied that the evidence sufficiently supports the findings challenged by all three parties. The claimant's testimony concerning her fall from the garage roof while at work on \_\_\_\_\_, was unrefuted. The evidence concerning the identity of the claimant's employer on the date of her injury is in substantial conflict. While there was some evidence which would support a finding that on the date of injury the claimant was either an independent contractor or was employed by the company, we cannot say that the hearing officer's determination that she was the employee of Mr. R on that date 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, 176 (Tex. 1986). The period of disability found by the hearing officer is sufficiently supported by the claimant's testimony and the medical records. With regard to the issue of waiver by Carrier 1, the hearing officer determined that although Carrier 1 did not dispute the compensability of the injury within 60 days of receiving written notice thereof, Carrier 1 is not liable because the claimant was not an employee of the company, Carrier 1's insured. We find the evidence sufficient to support the challenged factual findings and legal conclusion pertaining to this issue. We do, however, reform the double negative in Conclusion of Law No. 6 and so much of the "Decision" as states that Carrier 1 "did not dispute the compensability of the claimed injury by not [sic] contesting in accordance with Texas Labor Code §409.021" by deleting the second "not."

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

The true corporate name of insurance carrier 1 is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

The true corporate name of insurance carrier 2 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.**

Philip F. O'Neill  
Appeals Judge

CONCUR:

Michael B. McShane  
Appeals Judge

Robert W. Potts  
Appeals Judge