APPEAL NO. 021752
FILED AUGUST 14, 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 June 20, 2002. The hearing officer determined that respondent 2 (claimant) sustained a compensable injury on _____ (as stipulated by all parties); that the claimant was not an employee of (off-duty employer) at the time of his injury; that the claimant was an employee of the appellant, (self-insured county herein), at the time of his injury; and that the self-insured county is liable for the claimant's _____, compensable injury. The self-insured county appeals, asserting that the evidence is insufficient to support the determinations, that the hearing officer erred in not determining or assigning which party had the burden of proof, and that the hearing officer did not apply the correct legal standards. Both respondent 1 (carrier) and the claimant replied to the self-insured county's appeal, urging affirmance.

DECISION

Affirmed.

BURDEN OF PROOF

A claimant has the burden of proving by competent evidence that an injury occurred within the course and scope of his employment. Reed v. Aetna Casualty & Surety Company, 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). The claimant's burden was met when the parties stipulated that he sustained a compensable injury on _____, because Section 401.001(10) defines "compensable injury" as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." As to the self-insured county's assertion of error by the hearing officer in not determining or assigning which party had the burden of proof, we note that it has been held that a claimant has the burden of establishing his relationship as an employee of a subscriber to workers' compensation insurance. United States Fidelity & Guaranty Company v. Goodson, 568 S.W.2d 443 (Tex. Civ. App.-Texarkana 1978, writ ref'd n.r.e.). The claimant testified that he has been employed by the self-insured county for over eight years, and there was no evidence to the contrary. He also testified that he worked "Special Duty" for the off-duty employer on _____, and this was uncontradicted. There was sufficient evidence from which the hearing officer could conclude that the claimant met his burden of establishing that he was an employee of both the self-insured county and the off-duty employer. The self-insured county contended in its denial of the claim and at the CCH that the claimant was not working for the county at the time of his injury. The carrier likewise contended in its denial of the claim, and at the CCH, that the claimant was not working for the off-duty employer at the time of his injury. Since both the self-insured county and the carrier raised this as a defense to defeat the claimant's claim for workers' compensation benefits as to themselves, they both had the burden to

prove their assertions. *See* Dodd v. Twin City Fire Insurance Company, 545 S.W.2d 766 (Tex. 1977). In view of this shared burden, we perceive no possible misapplication of the burden of proof by the hearing officer, and no requirement that the hearing officer assign this burden of proof to a particular party.

DETERMINATION OF EMPLOYER AND LIABILITY FOR BENEFITS

The existence of an employer-employee relationship is a question of fact for the hearing officer, as fact finder, to resolve. As the fact finder, the hearing officer was charged with the responsibility for resolving the conflicts in the evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer could believe all, part, or none of the testimony of any witness and could properly decide what weight he would assign to the other evidence before him. Campos, *supra*. The hearing officer apparently credited the claimant's testimony that all the events occurred within the jurisdiction where the claimant served as a deputy sheriff; that he wore his regular duty uniform and provided equipment; that the claimant observed a criminal act occurring and believed that he was acting as a police officer in responding to the criminal act; that he was no longer working for the off-duty employer when he gave chase; and that he would have acted in the same manner in the same situation, even if not then working for either the self-insured county or the off-duty employer. We will not substitute our judgment for that of the hearing officer where, as here, his determinations are supported by sufficient evidence. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Likewise, the fact that the evidence could have allowed different inferences does not provide a sufficient basis for reversing the hearing officer's decision on appeal. Texas Workers' Compensation Commission Appeal No. 94281, decided April 20, 1994 (Unpublished). We are satisfied that the challenged findings 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).

We are further satisfied that the hearing officer's determinations of the disputed issues are not legally incorrect. He obviously considered our decisions in Texas Workers' Compensation Commission Appeal No. 960004, decided February 16, 1996, and in Texas Workers' Compensation Commission Appeal No. 961682, decided October 9, 1996; both involved off-duty police officers working at a private business who were determined to have reverted to on-duty peace officer status in, respectively, resisting a robbery and quelling a disturbance. *Compare* Texas Workers' Compensation Commission Appeal No. 93375, decided July 1, 1993, a case strongly urged by the self-insured county as dispositive of the instant case, but which we find to be distinguishable, as that claimant was out of his jurisdiction, wearing civilian clothing, and not otherwise identified as a police officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

LJ
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

The true corporate name of the insurance carrier 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.

_____
Michael B. McShane
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Robert E. Lang
Appeals Panel
Manager/Judge