

APPEAL NO. 021765  
FILED AUGUST 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 was held on June 19, 2002. The only issue was:

1. Was [Company S] or [Company I] the [respondent] Claimant's employer for purposes of the Texas Workers' Compensation Act at the time of the claimed injury.

The hearing officer determined that Company I was the claimant's employer and that the appellant (carrier 2) was liable for benefits.

Carrier 2 appealed, presenting arguments why Company S and its insurer (carrier 1) should be liable, that the claimant was an employee of Company S, and was directed, and supervised by JZ, who was also an employee of Company S. Carrier 1 responded, urging affirmance. The file does not contain a response from the claimant.

DECISION

Affirmed.

The facts, although somewhat complicated, are largely undisputed although the inferences that they raise are subject to dispute. The hearing officer's Statement of the Evidence fairly and concisely sets out the facts of the case. Basically Company I had a contract to apply a floor sealant at a convenience store under construction but did not have a crew to perform the work. Through an independent salesman (and former employee of Company S) Company I arranged with a field superintendent of Company S to borrow a crew supervised by JZ from Company S to perform the work. The president and chief operating officer of Company I was aware of the arrangement and together with a representative of the sealant manufacturer interviewed JZ to see if he was qualified to supervise the application of the sealant. Company S's crew was available because they did not have any work that day. The arrangement was that Company S would pay the crew (including the claimant) for the job and Company I would reimburse Company S for their cost. The claimant apparently sustained a slip and twist back injury on August 7, 2001, the first or second day of the floor sealant job.

Carrier 2 argues that JZ, an employee of Company S had direct control and supervision of the claimant. Carrier 1 argues that JZ and the entire Company S crew were borrowed servants of Company I. The hearing officer's analysis was that Company I's business was being furthered at the time of the claimed injury, that Company S did not profit from the arrangement, that Company I needed a crew to apply the sealant, that Company I "ultimately paid the crew, although the money went through [Company S]," that Company I exercised its right of control "by borrowing the crew and

allowing [JZ] to directly supervise it” and that “the crew, including [JZ], were borrowed servants of [Company I].”

Carrier 1 cites Texas Workers' Compensation Commission Appeal No. 012048, decided October 19, 2001, a case having similar circumstances where the employee of one employer was working under the direction and control of another employer. The Appeals Panel in that case cited Esquivel v. Mapelli Meat Packing Co. 932 S.W.2d 612 (Tex. App.-San Antonio 1996, writ denied) for the proposition that under the borrowed servant context, the employer was the entity that controlled the “very transaction out of which the injury arose.” In this case the hearing officer determined that the entire crew, including JZ and the claimant, were borrowed servants of Company I and the critical question was “which company controls, not which supervisor controls.” The hearing officer’s determination is supported by sufficient evidence and nothing in our review of the record reveals that the challenged determination is either incorrect as a matter of law or is so contrary to the great weight of the evidence to require its reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer’s decision and order are affirmed.

The true corporate name of the insurance carrier (carrier 1) is **ST. PAUL MERCURY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

The true corporate name of the insurance carrier (carrier 2) is **SECURITY NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DONALD GENE SOUTHWELL  
10000 NORTH CENTRAL EXPRESSWAY  
DALLAS, TEXAS 75265.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Roy L. Warren  
Appeals Judge