

APPEAL NO. 022354
FILED NOVEMBER 4, 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 August 19, 2002. The hearing officer determined that the respondent (claimant) was employed by the appellant's (carrier) insured and had disability from his undisputed injury beginning on November 9, 2001, and continuing through the date of the CCH.

The carrier has appealed, arguing that there was no evidence to show that the claimant was employed by its insured, as opposed to a separate company. The carrier further argues that the claimant worked until the date he was laid off, and therefore any inability to work was not due to a work-related injury.

DECISION

We affirm the hearing officer's decision.

The hearing officer has offered a fair summary of the evidence. We would only add a few points.

Neither of the brothers who were alleged to own the two companies at the center of the issues testified. The comptroller for the carrier's insured employer testified and when asked why the name of the employer appeared on the claimant's W-2 forms for federal income tax purposes, she said that she "would assume" that it was because the carrier's insured employer rendered payroll and tax preparation services for the claimant's asserted employer. She stated, however, that she was not privy to the details whereby she understood that the asserted employer was acquired by the carrier's insured employer. She also said that she had never seen any paperwork establishing either company and her information about which of two brothers owned which company was based upon what she had been told. She agreed that the carrier's insured employer performed a lot of government work and as such was required to have workers' compensation insurance. There was no testimony (as opposed to argument) offered about the coverage status of the asserted employer.

The claimant's supervisor, Mr. L, stated that he had no knowledge of the business relationship of the asserted employer and the carrier's insured employer. He said that the brothers both had main offices at the headquarters of the carrier's insured employer. There is a supervisor's incident report with the name of (Company X) at the top, and it is signed by Mr. L. Another of these forms, dated three months later, is signed by the claimant. It was brought out during the CCH, however, that the claimant was Spanish-speaking and spoke only a little English.

The record included W-2 forms (years 1998 through 2000) and three paycheck stubs to the claimant, all showing the carrier's insured employer as the "employer." The

claimant said that he was on light duty after his accident prior to being laid off on November 9, 2001. Various Work Status Reports (TWCC-73) show that the claimant was treated for a lumbar sprain and put under restrictions from August 2001 past the date he was laid off. It appears that the claimant paid for his own prescriptions, shown as “cash” sales on the pharmacy receipts. There are some records in evidence which appear to show payment for medical and therapy bills by Company X. These records characterize some amounts as “ineligible amounts.” At least one of these amounts is characterized as a deductible, and some of the practitioners appear to have been paid through filing of regular health insurance claims to the asserted employer.

What is notable is what the record does not include that might have cleared up the company relationships and coverage promptly. Aside from missing testimony or statements from the purported company owners, the carrier’s policy is not in evidence. There is no policy in evidence from Company X (argued, but not proven, to be the insurer for the asserted employer through an occupational accident policy). The carrier’s insured employer was a corporation; no corporate records or Secretary of State filings are, however, in evidence. There are essentially no records from the claimant’s personnel file except a verification of the claimant’s legal immigration status; the photocopy in evidence appears to have a superimposed sticker with the name of the employer as the asserted employer. (We characterized this as superimposed because an underlying printed name has a “downstroke” in the “Y” blotted out by name and address block).

There is what the hearing officer could believe to be a self-serving letter, signed by the comptroller for the carrier’s insured employer, and dated over a month after the carrier filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21). This letter is written to the carrier and states that the claimant was the employee of the asserted employer and that the carrier’s insured “merely provided a payroll service”. This letter asserts that the asserted employer had an “occupational accident policy” with Company X.

The carrier has made arguments similar to an assertion that the claimant was a borrowed servant. The hearing officer has properly characterized that the burden of proof belongs to the carrier in this instance. While paychecks alone might not indicate an employment relationship, we believe that in this case, the testimony of the claimant, the paycheck stubs, and the W-2 forms, representing to the Internal Revenue Service that the carrier’s insured was the “employer,” made a prima facie case that the claimant’s ultimate employer was the carrier’s insured, regardless of the doing business name of his immediate employer.

The hearing officer could chose to disbelieve the testimony that was offered and her conclusion that the claimant’s nominal employer was a division of the insured employer, and not a separate legal entity for purposes of workers’ compensation coverage, is supported by the record. The hearing officer’s conclusion as to the existence of disability is likewise supported. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own

judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Veronica Lopez
Appeals Judge

Michael B. McShane
Appeals Judge