

APPEAL NO. 022669  
FILED DECEMBER 5, 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 August 16, 2002, with the record closing on September 14, 2002. The following issues were before the hearing officer: (1) was (company) the employer for purposes of the 1989 Act? and (2) has the respondent (carrier) waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021? The hearing officer determined that the company was not the appellant's (claimant) employer for purposes of the 1989 Act. Given this determination, the hearing officer declined to address the issue of carrier waiver. The claimant appeals the employer determination on sufficiency of the evidence grounds, and asserts that the carrier waived the right to contest compensability of the claimed injury. The carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the company was not the claimant's employer for purposes of the 1989 Act. The determination involved questions of fact for the hearing officer to resolve. See Texas Workers' Compensation Commission Appeal No. 013127, decided January 25, 2002; and Texas Workers' Compensation Commission Appeal No. 020608, decided May 1, 2002. The hearing officer is the sole judge of the weight and credibility of the evidence and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. Section 410.165(a). 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, 176 (Tex. 1986).

Notwithstanding the above, the claimant contends that the carrier waived the right to contest compensability of the claimed injury under Section 409.021, including the right to dispute the claimant's employment status which "is an integral part of the determination of the compensability of his injury . . . ." Contrary to the claimant's assertion, the status of being an employee of an insured for which a carrier is liable is an issue of "coverage," not compensability. Texas Workers' Compensation Commission Appeal No. 022268-s, decided October 30, 2002. "Coverage" is a threshold requirement for establishing liability of a carrier. Appeal No. 022268-s; Texas Workers' Compensation Commission Appeal No. 960500, decided April 19, 1996. Where the claimant is determined not to be an employee of the insured on the date of injury, as in this case, the carrier cannot be held liable for the claimed injuries under the waiver provision of Section 409.021, as a matter of law. Appeal No. 022268-s, citing Houston General Insurance Co. v. Association Casualty Insurance Co., 977 S.W.2d 634 (Tex. App.-Tyler 1998, no pet. h.)(holding that a carrier cannot waive into coverage, for

a person not employed by its insured on the date of injury, by failing to observe the timely defense provisions of Section 409.021); Appeal No. 960500. Accordingly, the hearing officer's treatment of the waiver issue is not reversible error.

The decision and order of the hearing officer are affirmed.

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

**UNITED STATES CORPORATION COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Veronica Lopez  
Appeals Judge