

APPEAL NO. 023173  
FILED FEBRUARY 5, 2003

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 November 15, 2002. The hearing officer determined that the appellant's (claimant) average weekly wage (AWW) is \$485.70. The claimant appeals and the respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's AWW is \$485.70. The claimant testified that he is an independent contractor (self-employed truck driver) who qualifies for workers' compensation benefits. The claimant testified that he was paid a percentage for hauling oil field equipment. There was no dispute concerning the amount that the claimant was paid for performing "line hauls," during the 13 weeks preceding his injury. The dispute centered on what portion of that amount should be included as wages in the calculation for determination of AWW. The carrier contended one-third was the appropriate amount while the claimant contended that seventy percent was appropriate. The definition of "wages" in Section 401.011(43) includes all forms of remuneration payable for a given period to an employee for personal services.

The carrier contended that the claimant's wages are one-third of the amount paid to the claimant for "line hauls." The carrier contended that the gross amounts paid to the claimant were not merely wages because it included money for equipment use and capital investment that are not properly included as wages. We agree. Those portions that were paid to the claimant for the use of his truck, rather than for personal services, were properly excluded from the calculation for AWW.

There was conflicting evidence offered with respect to the correct percentage of the gross line haul amounts that were wages. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record and resolved what facts were established. We conclude that the hearing officer's determinations are sufficiently supported by the record and 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 affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

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Roy L. Warren  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Robert W. Potts  
Appeals Judge