

APPEAL NO. 030660
FILED APRIL 28, 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 19, 2002, with the record closing on December 9, 2002. The following issue was certified for resolution: Was (Company 1) or (Company 2) the claimant's employer for purposes of the 1989 Act? The hearing officer determined that Company 1 and Company 2 were coemployers with workers' compensation insurance provided by Company 1 by contract between the employers. The appellant (claimant) appeals, asserting that the employers failed to comply with Staff Lease Services Act (SLSA) and, therefore, are not coemployers. In the alternative, the claimant asserts that Company 1 and Company 2 are not coemployers under a borrowed servant analysis. The carriers urge affirmance. Company 2 also filed a brief in response to the claimant's appeal. Because Company 2 was not a party to the proceeding below, we do not consider its response in arriving at our decision. Texas Workers Compensation Commission Appeal No. 951912, decided December 20, 1995.

DECISION

Affirmed.

The hearing officer did not err in determining that Company 1 and Company 2 were coemployers for purposes of the 1989 Act. We recognize that the SLSA supercedes the common law right-of-control test in determining employer status for workers' compensation coverage purposes. Texas Workers' Compensation Insurance Fund v. DEL Industrial, Inc., (Docket No. 98-0946, decided September 15, 1999). The SLSA, however, applies to persons providing staff leasing services in this state. TEX. LAB CODE ANN. § 91.001, *et seq.* Staff leasing services are defined under the SLSA, in part, as "an arrangement by which employees of a license holder are assigned to work at a client company and in which employment responsibilities are in fact shared by the license holder and the client company, the employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature, and a majority of the work force at a client company worksite or a specialized group within that work force consists of assigned employees of the [staff leasing services company]." Section 91.001(11). The hearing officer considered the evidence and determined that the SLSA was not applicable in this case because the claimant was a temporary employee who was working out-of-state on the date of injury. Additionally, our review of the evidence does not reveal that a majority of the workforce at Company 2's worksite or a specialized group within that workforce consisted of assigned employees from Company 1. Accordingly, the hearing officer properly applied a borrowed servant analysis in determining employer status for purposes of 1989 Act.

The Appeals Panel has recognized coemployment under a borrowed servant analysis. See Texas Workers' Compensation Commission Appeal No. 021580, decided

August 8, 2002; Texas Workers' Compensation Commission Appeal No. 011605, decided August 29, 2001; Texas Workers' Compensation Commission Appeal No. 962340, decided January 2, 1997; *compare* Texas Workers' Compensation Commission Appeal No. 962625, decided February 7, 1997, citing Marshall v. Toys-R-Us Nytex, Inc., 825 S.W.2d 193, 197 (Tex. App.-Houston [14th Dist.] 1992, writ denied). The determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). 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).

The decision and order of the hearing officer are affirmed.

The true corporate name of insurance carrier 1 is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Commercial Compensation Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY
TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

The true corporate name of insurance carrier 2 is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A Knapp
Appeals Judge