

APPEAL NO. 030833  
FILED MAY 27, 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 January 2, 2003. In Texas Workers' Compensation Commission Appeal No. 030215, decided March 10, 2003, we reversed and remanded the hearing officer's decision for reconstruction of the record. The record was reconstructed with an additional hearing held on March 27, 2003. The hearing officer determined that (1) the appellant (claimant) was an independent contractor, for workers' compensation purposes, at the time of the claimed injury; (2) the claimant did not sustain a compensable injury on \_\_\_\_\_, because she was not covered with workers' compensation insurance at that time; and (3) the claimant did not have disability, because she did not sustain a compensable injury. The appellant (claimant) appeals these determinations on legal and sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

**INDEPENDENT CONTRACTOR**

The hearing officer did not err in determining that the claimant was an independent contractor, for workers' compensation purposes, at the time of the claimed injury. 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 claimant argues that she was not an independent contractor, as a matter of law, in the absence of a properly filed agreement to that effect under Section 406.145 and corresponding Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 112.202 (Rule 112.202). However, Section 406.145 applies only to contractors and workers preparing to construct, constructing, altering, repairing, extending, or demolishing a residential structure, a commercial structure that does not exceed three stories in height or 20,000 square feet, or an appurtenance thereto. Section 406.142. We note that the claimant cleaned apartments at the time of her injury. Accordingly, we perceive no legal error.

**INJURY AND DISABILITY**

The hearing officer did not err in determining that the claimant did not sustain a compensable injury and did not have disability. The claimant's challenge to the injury and disability determinations is premised upon the success of her argument with regard to claimant's employment status. Given our affirmance of the hearing officer's determination that the claimant was an independent contractor, we likewise affirm the hearing officer's injury and disability determinations.

The decision and order of the hearing officer are affirmed.

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

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
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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Robert W. Potts  
Appeals Judge