

APPEAL NO. 031080
FILED JUNE 20, 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 April 18, 2003. The hearing officer determined that the respondent (claimant) was not a seasonal employee and the appellant (carrier) is, therefore, not entitled to an adjustment of the average weekly wage (AWW) under Section 408.043. The carrier appeals this determination essentially on sufficiency of the evidence grounds. The claimant did not file a response.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not a seasonal employee and that the carrier is, therefore, not entitled to an adjustment of AWW under Section 408.043. The carrier, who seeks an adjustment of AWW, has the burden to prove that the claimant was a seasonal employee. Texas Workers' Compensation Commission Appeal No. 002390, decided November 28, 2000. Section 408.043(d) defines a "seasonal employee" as an employee who, as a regular course of the employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year. See *a/so* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 128.5(a) (Rule 128.5(a)). Whether the claimant was seasonal employee is a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 022715, decided December 2, 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). The hearing officer clearly was not persuaded by the carrier's evidence and found that the claimant was not a seasonal employee. The hearing officer's determination is 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). Because the claimant is not a seasonal employee, the hearing officer properly concluded that the carrier is not entitled to an adjustment of AWW under Section 408.043.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge