

APPEAL NO. 031506  
FILED JULY 31, 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 (CCH) was held on March 31, 2003, and closed on April 30, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, while he was an employee for worker's compensation purposes of the appellant's (carrier) insured and had disability from May 2, 2002, through the date of the CCH. The carrier appeals, contending that the great weight of evidence does not support the hearing officer's decision regarding date of injury, disability, or employee status. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Affirmed.

The determination of whether a person is an employee of the employer is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 950075, decided February 28, 1995. Where no contract between the parties establishes the status of the worker or the employer's right to control his work, an employee-employer relationship may be established circumstantially by evidence of actual exercise of control. Anchor Casualty Co. v. Hartsfield, 390 S.W.2d 469, 471 (Tex. 1965). If, after considering evidentiary factors bearing on one party's right to control the details of another's work, there is conflicting evidence as to the status of the worker, the issue is for the trier of fact. Eagle Trucking Co. v. Texas Bitulithic Co., 590 S.W.2d 200, 212 (Tex. Civ. App.-Tyler 1979), *aff'd in part and rev'd in part on other grounds*, 612 S.W.2d 503 (Tex. 1981). The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

We will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 8, 1995. Mr. M, the employer, testified that he exercised no right of control over the claimant in any manner. The claimant testified that he worked directly for Mr. M's company and was provided tools, paid, fed, and housed by this company. We conclude that the determination regarding the claimant's employee status is not so against the great

weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, we affirm.

Likewise, the determination of the date of injury and whether one has disability are questions of fact for the hearing officer to determine. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain, supra; Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We conclude that the determination regarding the claimant's date of injury and period of disability are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

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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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge