

APPEAL NO. 031536
FILED JULY 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 May 8, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) was not an employee of (CT) at the time of the claimed injury of _____; that the claimant was an independent contractor pursuant to Section 406.121 on _____; that the claimant was not in the course and scope of his employment at the time of his injury of _____; that the claimant did not have disability because he did not sustain a compensable injury; and that the claimant "would be entitled to all rights and remedies under the [1989] Act if his _____ injury was compensable." In his appeal, the claimant asserts error in the determination that he was not an employee of CT at the time of his fall on _____; that he was not in the course and scope of his employment at the time of his injury; and that he did not have disability. In its response, Liberty Mutual Insurance Company, respondent 1 (carrier 1), who was the workers' compensation carrier for CT on _____, urges affirmance of the determination that the claimant was not an employee of CT on _____, but rather was an independent contractor. Clarendon Insurance Company, respondent 2 (carrier 2), who provided workers' compensation coverage to the claimant in his work as an independent contractor, likewise urges affirmance of the determinations that the claimant was an independent contractor at the time of the alleged injury, that the claimant was not in the course and scope of his employment at the time of his injury, and that he did not have disability because he did not sustain a compensable injury. There was no appeal of the hearing officer's extraterritorial jurisdiction determination and that determination has become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was an independent contractor at the time of the claimed injury and not an employee of CT. There was conflicting evidence presented on this issue at the hearing. As the fact finder, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. The hearing officer simply was not persuaded that the claimant sustained his burden of proving that he was an employee of CT on _____. Rather, she determined that "the evidence demonstrated that the Claimant was operating as an independent contractor in connection with his work for [CT]." Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Given our affirmance of the determination that the claimant was not an employee of CT

at the time of his alleged injury, the hearing officer properly determined that carrier 1, CT's workers' compensation carrier, is not liable for benefits.

Next, we consider the claimant's assertion that the hearing officer erred in determining that he was not in the course and scope of his employment on _____, when he slipped and fell getting out of the cab of his truck in (city), (state), injuring his right knee, back, and groin. Again, conflicting evidence was presented on the issue of what the claimant was doing at the time he slipped getting out of the truck. The claimant maintained that he had delivered his load and was waiting to be dispatched for another load and that when he was getting out of the truck, he was on the way to a pay telephone to call CT's safety department in response to a computer message he received on the computer in his truck about a ticket he had received because the trailer was missing a license plate. However, there was conflicting evidence that, at the time of his fall in the afternoon of _____, the claimant was simply waiting to be dispatched for another load, after having refused a haul earlier that morning, due to problems with payment for a load to that customer in the past. The hearing officer resolved that conflicting evidence by determining that, at the time of his fall, the claimant was not "engaged in an activity that originated in or had to do with either his or [CT's] business or that was performed in furtherance of either his or [CT's] business or affairs." That determination is supported by sufficient evidence and our review of the record does not reveal that it is so contrary to the great weight and preponderance of the evidence as to compel its reversal on appeal. Cain, *supra*.

Having affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of insurance carrier 1 is **LIBERTY MUTUAL 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.**

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

**UNITED STATES CORPORATION COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge