

APPEAL NO. 031600
FILED AUGUST 4, 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 commenced on October 22, 2002, and concluded on May 13, 2003. An issue of who was respondent 1's (claimant) employer for purposes of the 1989 Act was resolved by stipulation that (employer 1), was not the claimant's employer on _____, and that respondent 2, (carrier H) did not provide workers' compensation coverage for the claimant's employer on _____. With regard to the other issue, the hearing officer determined that neither carrier H nor the appellant, (carrier A) provided workers' compensation insurance for (employer 2) who was the claimant's employer on _____.

Carrier A has appealed on basically three grounds: (1) that carrier A has paid the claimant over \$70,000 worth of benefits under the 1989 Act; (2) that carrier A withdrew its initial dispute as to coverage on May 13, 2003; and (3) that the hearing officer disregarded a compromise settlement between carrier A, and employers 1 and 2 and others, where carrier A accepted liability for the claimant's claim thereby leaving an "innocent party [employer 2], bare." The claimant responds, contending that: (1) the payment of benefits does not establish workers' compensation coverage; (2) that coverage was not established or created by the withdrawal after the fact of carrier A's dispute as to coverage and; (3) that neither the Texas Workers' Compensation Commission nor the claimant were parties to any compromise settlement agreement. The claimant urges that there was no policy of workers' compensation insurance in effect.

DECISION

Affirmed.

The parties stipulated that the claimant sustained an injury in the course and scope of his employment on _____, and that the claimant was an employee of employer 2. Initially, after the claimant filed his claim, carrier A denied liability on the basis that it did not have coverage. Subsequently the claimant retained an attorney and apparently some type of nonsubscriber litigation was asserted. The claimant was apparently a temporary employee assigned by a leasing agency. There were a number of other potential employers. Eventually one of the other potential employers (employer 3) entered into an agreement with carrier A that it would pay all benefits, indemnity, medical expenses, and escrow money for future benefits due to the claimant. The claimant was not a party to that agreement and contends that carrier A, under that agreement, was not an insurance carrier but was only a third party administrator for employer 3.

The hearing officer noted that the claimant was not a party to carrier A's agreement, and that the only workers' compensation policy in evidence by its terms does not include the claimant as it only covers employees of employer 1. Carrier A advanced equitable agreements but as the claimant points out, nothing to indicate that the hearing officer's determination is incorrect. The fact that employer 2 may be left "bare" is not the fault of the claimant and the negotiations regarding the compromise settlement agreement did not include the claimant. The carrier and an employer in this case cannot agree to a "settlement" which limits the claimant's options without the agreement of the claimant.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are 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).

We affirm the hearing officer's decision and order.

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

**JAMES W. FISHER
8111 LBJ FREEWAY
DALLAS, TEXAS 75251.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge