

APPEAL NO. 031788  
FILED AUGUST 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 June 20, 2003. The hearing officer determined that because the appellant (claimant herein) was not an employee of (insured) on \_\_\_\_\_, the claimant was not entitled to benefits through the coverage of the respondent (carrier herein). The claimant appealed on sufficiency of the evidence grounds. The carrier urges affirmance.

DECISION

Affirmed, as reformed.

The hearing officer did not err in finding that the claimant was not an employee of the insured for purposes of the 1989 Act. The claimant's employee status involved questions 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. (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 that the claimant was not an employee of the insured 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 hearing officer's finding that the claimant was not an employee of the insured clearly supported his determination of no coverage by the carrier and that the claimant was not entitled to benefits from the carrier.

However, once the hearing officer determined that there was no coverage, he did not have jurisdiction to resolve the issues of injury and disability. The remedy, if any, for an employee who is injured on the job working for a nonsubscriber is to file an action for damages in a court of general jurisdiction. See Section 406.033. It is not proper for the hearing officer or for us to invade the jurisdiction of the court by making findings on the issues of injury and/or disability. We, therefore, consider the findings of fact of the hearing officer concerning injury and disability to be surplusage and we reform his decision by striking them.

As reformed, the decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

CONCUR IN THE RESULT:

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Edward Villano  
Appeals Judge