

APPEAL NO. 032250
FILED OCTOBER 9, 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 July 10, 2003. The hearing officer determined that the appellant's (claimant) employer on _____, was (CM) under the provisions of the Texas Workers' Compensation Act; that CM and (FO) were the claimant's coemployers under the provisions of the Staff Leasing Services Act; and that respondent 1 (carrier 1) is liable for benefits for the claimant's _____, compensable injury. The claimant appeals the hearing officer's determination that carrier 1 is liable for benefits. Carrier 1 and respondent 2 (carrier 2) urge affirmance of the hearing officer's decision. The hearing officer's determinations relating to the proper employer(s) have not been appealed and have, therefore, become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The claimant sustained a crush injury to his left hand on _____. The evidence reflects that while a policy purporting to provide workers' compensation benefits was procured listing (SA) as the employer, the policy never actually covered the claimant or other similarly situated employees. After several workers' compensation claims were made, the omission was discovered and carrier 1, along with others, initiated suit against SA and others. A compromise settlement was reached wherein carrier 1 agreed to retroactive liability for the time period when no workers' compensation coverage had been provided to certain workers, including the claimant. The claimant testified that he had been receiving compensation benefits through carrier 1 until December 2002. The hearing officer determined, and no party has disputed on appeal, that neither FO nor CM had workers' compensation coverage with carrier 1 prior to the claimant's date of injury. However, the hearing officer concluded that despite the absence of any coverage provided by carrier 1, it was nevertheless the liable carrier via the aforementioned settlement agreement approved by a court of competent jurisdiction in October 2002.

The hearing officer erred in determining that carrier 1 is liable for workers' compensation benefits relating to the claimant's _____, work-related injury. The facts of the present case are similar to those in Texas Workers Compensation Appeal No. 031600, decided August 4, 2003; wherein the Appeals Panel affirmed a hearing officer's decision that neither of the potential carriers provided coverage on the date of the claimant's injury and stated, "[t]he carrier and an employer in this case cannot agree to a 'settlement' which limits the claimant's options without the agreement of the claimant." Since neither carrier 1 nor any other carrier provided workers' compensation coverage for a class of employees of CM or FO that included the claimant on _____, carrier 1 could not retroactively provide coverage

through a settlement agreement absent the claimant's consent. Accordingly, the hearing officer's decision is reversed and a new decision rendered that since none of the alleged carriers provided workers' compensation coverage for a class of employees that included the claimant on _____, none of the carriers are liable for benefits.

The true corporate name of carrier 1 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.**

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

**RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge