

APPEAL NO. 040154  
FILED MARCH 15, 2004

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 December 19, 2003. The hearing officer resolved the disputed issues by deciding that respondent 2 (claimant) sustained a compensable injury on \_\_\_\_\_, which resulted in disability beginning on May 3, 2003, and continuing through the date of the CCH; and that (SF) is the employer for the purposes of the 1989 Act. An appeal disputing the finding that SF was the claimant's employer for purposes of the 1989 Act was filed jointly by the appellant (carrier 1) and SF. The appeal alleges that "it is highly unlikely the hearing officer reviewed the underlying evidence." Respondent 1 (carrier 2) filed a response, urging affirmance of the disputed finding. The file does not contain a response from the claimant.

DECISION

Affirmed.

Carrier 2 contends in its response that the request for review is untimely and should not be considered. A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202(a). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994. Pursuant to Section 410.202(d), Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code are not included in the computation of time in which a request for appeal must be filed.

Commission records indicate that the decision was distributed to the parties on December 30, 2003, and carrier 1 acknowledges receipt of the decision on that date. The last date for carrier 1 to file an appeal was January 22, 2004, and the deadline for receipt was January 27, 2003. Carrier 1's appeal was stamped as received by the Commission on January 23, 2004, and the envelope in which it was sent was post marked January 20, 2004. Carrier 1's appeal was timely as it was both mailed within 15 days of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after receipt of the decision.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, which resulted in disability beginning on May 3, 2003, and continuing through the date of the CCH. At issue was whether (ARC) or SF was the claimant's employer for purposes of the 1989 Act. Carrier 1 argues that the findings that the

claimant was an employee of SF at the time of the compensable injury are so contrary to the great weight and preponderance of the evidence that they are wrong and unjust. Additionally, carrier 1 alleges that the hearing officer erred in not evaluating the case under the theory argued at the CCH of the borrowed servant doctrine.

The hearing officer's determination that the claimant was an employee of SF for purposes of the 1989 Act involved fact questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. Section 410.165(a). Although the evidence was conflicting, there was evidence to support the hearing officer's findings. In view of the evidence presented, we cannot conclude that the hearing officer's determination is either incorrect as a matter of law or 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).

We affirm the decision and order of the hearing officer.

The true corporate name of insurance carrier 1 is **DALLAS FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSTIN POLK  
14160 DALLAS PARKWAY, SUITE 500  
DALLAS, TEXAS 75254.**

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

**INNOVATIVE RISK MANAGEMENT  
ATTN: PAT HARTJES  
1431 GREENWAY DRIVE, SUITE 628  
IRVING, TEXAS 75038.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge