

APPEAL NO. 041340
FILED JULY 28, 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 was held on May 11, 2004. The hearing officer determined that the appellant (carrier) [Texas Workers' Compensation Insurance Fund, now known as Texas Mutual Insurance Company] provided workers' compensation insurance coverage for the employer that was in full force and effect on _____. The carrier appealed, arguing that the hearing officer's workers' compensation insurance coverage determination is against the great weight and preponderance of the evidence to be clearly wrong and manifestly unjust. The respondent (claimant) responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained an injury in the course and scope of his employment while working for the employer on _____. At issue was whether the carrier provided workers' compensation insurance coverage for the employer on _____. The carrier argues that the employer received notice of cancellation of the workers' compensation insurance policy prior to _____. The claimant argues that the employer received notice of cancellation of the policy after _____.

Section 406.008 provides in part that:

- (a) An insurance company that cancels a policy of workers' compensation insurance or that does not renew the policy by the anniversary date of the policy shall deliver notice of the cancellation or nonrenewal by certified mail or in person to the employer and the [Texas Workers' Compensation Commission (Commission)] not later than:
 - (1) the 30th day before the date on which the cancellation or nonrenewal takes effect; or
 - (2) the 10th day before the date on which the cancellation or nonrenewal takes effect if the insurance company cancels or does not renew because of:

* * * *

- (b) The notice required under this section shall be filed with the commission.
- (c) Failure of the insurance company to give notice as required by this section

extends the policy until the date on which the required notice is provided to the employer and the commission.

In evidence is an Insurance Carrier's Notice of Coverage/Cancellation/Non-Renewal of Coverage (TWCC-20) form, which lists the employer's name, policy number, and effective date of the cancellation as either June 6, 1999 or August 6, 1999, and a date stamp that states "RECEIVED TWCC, AUSTIN-CENTRAL, May, 04 1999, HAND-DELIVERED." Additionally, a Notice of Cancellation letter dated April 30, 1999, lists separate addresses for both the employer and the provider and a notation that states "VIA CERTIFIED MAIL" (Z 2426 629 377). (Emphasis in the letter.) The carrier argues that it gave the employer notice of the cancellation by certified mail on April 30, 1999. The claimant's employer testified that he did not receive notice of the cancellation by certified mail from the carrier, rather he received notice of the cancellation by fax from a client on August 6, 1999.

The hearing officer considered that evidence and commented in the Background Information section that the carrier's notice of cancellation letter dated April 30, 1999, was addressed to the employer and the provider "in separate addresses in two different towns" stating that the policy was being cancelled and that this notice reflected it was being sent by certified mail "but only one number (Z 246 529 377) was listed for the two different addresses for the two separate parties." The hearing officer commented that the carrier did not "produce a green card reflecting that [the notice] had been received by either addressee." The hearing officer was persuaded that the carrier failed to meet its burden of proof on the disputed issue. The hearing officer determined that the carrier provided workers' compensation insurance coverage for the employer that was in full force and effect on _____.

We have reviewed the complained-of determination and conclude that the hearing officer's determination is 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 decision and order of the hearing officer.

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

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

Veronica L. Ruberto
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge