

APPEAL NO. 042072  
FILED OCTOBER 18, 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 July 23, 2004. The hearing officer determined that: (1) the appellant, (self-insured or county herein) was the employer of (decendent) for purposes of the Texas Workers' Compensation Act [1989 Act] at the time of the claimed injury; (2) (Company W) was not the decendent's employer for purposes of the 1989 Act at the time of the claimed injury; and (3) the decendent sustained an injury in the course and scope of employment on \_\_\_\_\_, resulting in his death. The county appealed these determinations on sufficiency grounds and contends that: (1) the decendent was not in the course and scope of his employment with county at the time of the accident in question; (2) county was not the decendent's employer at the time of the accident; (3) the decendent was not directing traffic at the time of the accident in question; and (4) the decendent was not engaged in the performance of a public duty at the time of the accident. Respondent 1 (claimant/beneficiary) responded that the hearing officer did not err in making her determinations. Respondent 2, (carrier 2 herein), the insurer for Company W, also responds that the hearing officer did not err in making her determinations.

DECISION

We affirm.

The decendent in this case was an officer with the county and his duties included traffic patrol. On \_\_\_\_\_, decendent was off duty and was working an "extra job" on the county toll road helping with traffic for Company W, a construction company. The toll road was within his jurisdiction as an officer for the county. The decendent was driving his own personal car, which was struck by another car. At the time of the accident, the decendent was driving with his lights flashing and following as Company W's employees moved an arrow board. There was evidence from (Officer Z) that the decendent was driving on a closed lane while construction barrels were being picked up, so that the lane could then be reopened. The decendent later died of injuries sustained in the accident.

(Officer K), one of the decendent's former coworkers, testified that the decendent was working an "extra job" at the time of the accident. The county's precinct 4 constable department policy and ethics manual states that an "extra job" should be defined as "one that utilizes the individual's authority as a peace officer in order to conduct the job function." It also states that "all officers working an extra job which requires patrol functions and/or traffic stops must be in full uniform and comply with Department Policy regulating the use of a marked patrol vehicle."

Mr. H, the safety officer with Company W, testified that the decendent was hired by Company W for the specific purpose of helping to direct traffic at the toll road

construction site for the safety of the employees (of Company W) and to protect the traveling public. Mr. H said an arrow board is used to direct the traveling public away from a closed lane. He said the decedent was in full uniform and drove his own car, which was marked with stripes and lights. There was evidence that the decedent was escorting the truck that was towing the arrow board. Mr. H said: (1) Company W did not provide equipment to the decedent and controlled only the time and place where the work was to be done; (2) the decedent was paid by Company W by the hour; and (3) Company W did not provide benefits or training to the decedent.

We have reviewed the determinations the county complains of on appeal and we conclude that the hearing officer's determinations are supported by the record and 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).

County contends that the hearing officer erred in determining that the decedent was "directing traffic" at the time of his death. Given the fact that the decedent was in a marked car with flashing lights and was following other vehicles in a closed lane, the hearing officer could determine from the evidence that the decedent's actions served the purpose of directing traffic away from the closed lane. The decedent was not standing at an intersection and using his hands to direct cars to drive in certain directions, as might be the most commonly thought of means of "directing traffic." However, we conclude that the hearing officer did not err in making this determination.

County asserts that the hearing officer erred in determining that: (1) the decedent was engaged in the performance of a public duty at the time of his death; (2) he was in the course and scope of his employment; and (3) he was furthering the affairs of the county by his activities that resulted in his death. We have reviewed these determinations and we conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. We are also satisfied that the hearing officer's determinations are not legally incorrect. See Blackwell v. Harris County, 909 S.W.2d 135 (Tex. App.-Houston [14th Dist.] 1995, writ denied); see *also* Texas Workers' Compensation Commission Appeal No. 991497, decided August 26, 1999.

We affirm the hearing officer's decision and order.

According to information provided by the self-insured, the true corporate name the self-insured is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RE  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

According to information provided by carrier 2, the true corporate name of insurance carrier 2 is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO MALO  
ZURICH NORTH AMERICA  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TX 75251.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Margaret L. Turner  
Appeals Judge