

APPEAL NO. 110211  
FILED APRIL 21, 2011

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 January 13, 2011. The hearing officer resolved the disputed issue by deciding that the respondents (claimant beneficiaries) are not barred from pursuing Texas workers' compensation benefits because of an election by the decedent to receive benefits under the Workers' Compensation Act of the state of Mississippi.

The appellant (carrier) appealed, contending that the hearing officer erred in deciding that the claimant beneficiaries are not barred from pursuing Texas workers' compensation benefits. The claimant beneficiaries responded, urging affirmance.

DECISION

Reversed and rendered.

The parties stipulated that on \_\_\_\_\_, the decedent sustained a compensable injury resulting in his immediate death. It was undisputed that the decedent was living in the state of Texas at the time he was hired by his employer but that he was hired on April 29, 2009, in Mississippi and was assigned to a terminal in Mississippi. The decedent's wife testified that the decedent's supervisor was in Mississippi.

The decedent's wife testified that she received benefits paid under Mississippi workers' compensation law shortly after her husband's death. She testified she did not receive any benefit checks until she returned the paperwork for filing a workers' compensation claim in Mississippi. Additionally, she testified that she did file for Mississippi workers' compensation benefits. In evidence is an agreement, dated April 29, 2009, and signed by the decedent, which stated that the employer and the decedent mutually agree to be bound by the workers' compensation laws of the state of Mississippi.

Section 406.071 entitled Extraterritorial Coverage, provides that an employee working in another jurisdiction is entitled to Texas workers' compensation benefits if the injury would have been compensable in Texas, and if the employee has "significant contacts" in Texas or the employment is principally located in Texas. Significant contacts is further defined as meaning that the employee was hired or recruited in Texas and was injured not later than one year after the date of hire or had worked in Texas "for at least 10 working days during the 12 months preceding the date of injury." The evidence established that the decedent was injured more than one year after the date of hire and no evidence was presented regarding the number of days the decedent worked in Texas during the 12 months preceding the date of injury. Accordingly, the

claimant beneficiaries failed to establish “significant contacts” in Texas or principle employment in Texas as required by Section 406.071.

Section 406.075 provides:

- (a) An injured employee who elects to pursue the employee’s remedy under the workers’ compensation laws of another jurisdiction and who recovers benefits under those laws may not recover under this subtitle.
- (b) The amount of benefits accepted under the laws of the other jurisdiction without an election under Subsection (a) shall be credited against the benefits that the employee would have received had the claim been made under this subtitle.

In some instances a claimant or claimant beneficiary may receive benefits from another state without making an election to do so. In such a case, the claimant or claimant beneficiary may still pursue benefits in Texas and the amount received in benefits from the other state will be subtracted from the benefits paid under Texas law. See Appeals Panel Decision 032459, decided October 29, 2003.

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In the instant case, the hearing officer specifically found that the “claimant” received no benefits under the workers’ compensation law of Mississippi. In the Discussion portion of the decision and order, the hearing officer commented that the “[d]eceased sustained a fatal injury resulting in his instantaneous death, and no benefits were paid to [d]eceased.” As previously discussed, the claimant beneficiary testified that she filed for benefits in Mississippi and received benefits paid under the provisions of the Mississippi workers’ compensation law. There was no evidence to the contrary. If the hearing officer’s finding that the “claimant” received no benefits under the workers’ compensation law of Mississippi refers to the claimant beneficiaries that finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. If the hearing officer’s finding is a reference to the decedent, that finding is correct. However, the fact that the decedent received no benefits under the workers’ compensation law of Mississippi is not determinative of the outcome under the facts of this case pursuant to Section 406.075.

As previously noted, the claimant beneficiaries failed to establish “significant contacts” in Texas or principle employment in Texas as required by Section 406.071. Additionally, the evidence establishes that the claimant beneficiaries filed to request workers’ compensation benefits from the state of Mississippi and received workers’

compensation benefits from the state of Mississippi. Accordingly, we reverse the hearing officer's determination that the claimant beneficiaries are not barred from pursuing Texas workers' compensation benefits and render a new decision that the claimant beneficiaries are barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under the Workers' Compensation Act of the state of Mississippi.

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

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge