

APPEAL NO. 121893
FILED NOVEMBER 9, 2012

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 August 14, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) [Employer] is the respondent's (claimant) employer for purposes of the 1989 Act; (2) the claimant did sustain a compensable injury on [date of injury]; (3) the claimant does have disability from April 10 through June 4, 2012, as a result of a compensable injury sustained on [date of injury]; and (4) the appellant (self-insured) is limited to its defense that the claimant was not an employee of [Employer] as listed in its Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) dated April 16, 2012.

The self-insured appeals the hearing officer's determinations of whether it is the claimant's employer for purposes of the 1989 Act, that the claimant sustained a compensable injury on [date of injury], and had disability from April 10 through June 4, 2012, as well as the determination that it is limited to its defense that the claimant was not an employee of [Employer] as listed in its PLN-1 dated April 16, 2012. The claimant responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that on [date of injury], the claimant was injured while performing her job duties as a reserve deputy constable. It was undisputed that the claimant was not paid by the county for performing her duties as a reserve deputy constable. The self-insured argues that since the claimant was not paid for her job duties she was not an employee. Further, the self-insured argued that the county never took action to provide optional workers' compensation coverage for its volunteer reserve deputy constables. The claimant testified that she is licensed and bonded through the county and that the county "carries their commission and maintains their full time license." The claimant testified that she was told by her supervisor that she would be covered if she was injured.

It is undisputed that the self-insured is a political subdivision. See Section 504.001(3). Because the self-insured is a political subdivision, the applicable statute is Section 504.001 *et seq.* Section 504.001(2) defines employee as (A) a person in the service of a political subdivision who has been employed as provided by law; or (B) a person for whom optional coverage is provided under Section 504.012 (which specifically provides for optional coverage of volunteer police officers) or 504.013.

Section 504.012(a) provides that a political subdivision may cover volunteer fire fighters, police officers, emergency medical personnel, and other volunteers that are specifically named. A person covered under this subsection is entitled to full medical benefits and the minimum compensation payments under the law. Although the claimant testified she was told she would be covered in the event of an injury, she did not specify that she was told the coverage was workers' compensation insurance. No evidence was presented at the CCH to establish that [Employer] had agreed to provide optional coverage for reserve deputy constables pursuant to Section 504.012. In evidence was the agenda and minutes from the meetings of [Employer] Commissioners Court for various dates from 2009 through 2012 which included agenda items brought by the office of the constable of the precinct for which the claimant was a reserve deputy constable. None of the minutes in evidence indicate that a request was ever made to provide optional workers' compensation coverage for the reserve deputy constables. The claimant presented no evidence to the contrary.

The hearing officer cited Section 86.012(a) of the Local Government Code as authority that allows a county to appoint reserve deputy constables and therefore, was persuaded that the claimant was an employee of [Employer]. However, the fact that [Employer] was allowed to appoint reserve deputy constables does not make those reserve deputy constables employees under the 1989 Act.

In Goldminz v. City of Dallas, 2010 Tex. App. LEXIS 1392 (Tex. App.-Dallas, February 26, 2010), the claimant was a volunteer police officer with the city. The court held that because a reserve police officer serves without pay, he does not meet the definition of an employee under Section 504.012(a) of the 1989 Act. The court stated that there is no evidence that the city elected to give full medical benefits and the minimum compensation benefits provided by Chapter 504 to volunteer police officers, including Goldminz.

Similarly, in the instant case, the claimant was not paid for her duties as a reserve deputy constable. While the claimant testified that she understood she would be covered by workers' compensation insurance no evidence was presented to indicate that the county provided the optional coverage for volunteers provided in Section 504 of the 1989 Act.

Accordingly, we reverse the hearing officer's determination that [Employer] is the claimant's employer for purposes of the 1989 Act and render a new decision that [Employer] is not the claimant's employer for purposes of the 1989 Act.

"Compensable injury" is defined in Section 401.011 as an injury that arises out of the course and scope of employment for which compensation is payable under this subtitle. Because we have rendered a new decision that [Employer] is not the

claimant's employer for purposes of the 1989 Act, compensation is not payable. Accordingly, we reverse the hearing officer's determination that the claimant sustained a compensable injury on [date of injury], and render a new decision that the claimant did not sustain a compensable injury on [date of injury]. While the hearing officer's finding regarding the period of time that the claimant was unable to obtain and retain employment at pre-injury wages is supported by sufficient evidence, we reverse the hearing officer's determination that the claimant had disability from April 10 through June 4, 2012, because, without a compensable injury, the claimant would not have disability as defined by Section 401.011(16). We render a new decision that the claimant did not have disability from April 10 through June 4, 2012.

The hearing officer's determination that the self-insured is limited to its defense that the claimant was not an employee of [Employer] as listed in its PLN-1 dated April 16, 2012, is supported by sufficient evidence and is affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**COUNTY JUDGE
[ADDRESS]
[CITY], TEXAS [ZIP CODE].**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge