

APPEAL NO. 061764-s
FILED OCTOBER 31, 2006

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 July 19, 2006. The hearing officer resolved the disputed issues by deciding that: (1) both (Employer 1) and (Employer 2), were Respondent 2/Cross-Appellant 2's (claimant) employers on _____, for purposes of workers' compensation; (2) the claimant sustained a compensable left knee repetitive trauma injury; (3) that the date of injury (DOI) is _____; and (4) that the claimant had disability beginning May 18, 2006, through June 5, 2006.

The appellant/cross-respondent (Carrier 1) appealed the hearing officer's DOI, repetitive trauma injury, and employer determinations. Also, Carrier 1 argued that the hearing officer erred in changing the issue as reported in the benefit review conference (BRC) report with regard to the employer issue. Respondent 1/cross-appellant 1 (Carrier 2) cross-appealed the hearing officer's repetitive trauma injury, disability, and employer determinations. Both Carrier 1 and Carrier 2 argue that the hearing officer erred in determining that an unspecified "carrier" is ordered to pay benefits, and request clarification as to the hearing officer's Order. The claimant responded, urging affirmance.

DECISION

Affirmed in part, and reversed and rendered in part.

BACKGROUND INFORMATION

The claimant testified that he worked for Employer 1, a provider of temporary workers, from September 2005 through January 3, 2006, and that he was assigned to work with Employer 2 as a printing press assistant from September 2005 through May 18, 2006. The claimant testified that Employer 2 permanently hired him on January 4, 2006. The claimant testified that his job required him to do repetitive bending, stooping, and standing, and that he first began to feel left knee pain on _____, and that he first saw a doctor for his left knee on January 18, 2006. The claimant testified that he was placed on light duty on May 18, 2006, and that Employer 2 could not accommodate his work restrictions. The claimant contended that he had disability from May 18, 2006, through June 5, 2006.

CHANGE TO STATED EMPLOYER ISSUE

Carrier 1 argues that the hearing officer erred in changing the stated employer issue as reported in the BRC report. The unresolved issue identified in the BRC report states "[w]as [Employer 1] or [Employer 2], the Claimant's Employer for the purposes of workers' compensation *at the time of injury?*" (emphasis added). The record reflects

that the hearing officer read the employer issue to the parties and the parties agreed that the unresolved issue “[w]as [Employer 1] or [Employer 2], the claimant’s employer for the purposes of workers’ compensation *on the date of injury?*” (emphasis added). Review of the record reflects that Carrier 1 did not object to the stated issue at the CCH, therefore Carrier 1 did not preserve error.

REPETITIVE TRAUMA INJURY, DOI, AND DISABILITY

We conclude that the hearing officer’s compensable injury, DOI, and disability determinations are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W. 2d 175 (Tex. 1986). We affirm the hearing officer’s determinations on the issues of compensable injury, DOI, and disability.

EMPLOYER

The identity of the employer for purpose of workers’ compensation was at issue in this case. In Wingfoot Enters. v Alvarado, 111 S.W. 3d 134 (Tex. 2003), the Texas Supreme Court held that there may be two employers for workers’ compensation purposes when a provider of temporary workers furnishes a worker to a client that controlled the details of the work at the time the worker was injured and there was no agreement between the provider of temporary workers and the client regarding workers’ compensation coverage. The Texas Supreme Court also held that “[a]n employee injured while working under the direct supervision of a client company is conducting the business of both the general employer and that employer’s client. The employee should be able to pursue workers’ compensation benefits from either.” We affirm the hearing officer’s determination that both Employer 1 and Employer 2 were the claimant’s employers on _____, for purposes of workers’ compensation.

PROPER CARRIER

Both Carrier 1 and Carrier 2 argue that the hearing officer’s Order does not specify which “carrier” is to pay benefits, and request clarification as to the hearing officer’s Order. The hearing officer’s Order states “Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers’ Compensation Act, and Commissioner’s Rules.” Given that we have affirmed the hearing officer’s determination that both Employer 1 and Employer 2 were the claimant’s employers on _____, for purposes of workers’ compensation, it follows that both Carrier 1 and Carrier 2 are liable.¹ See Wingfoot, *supra*.

We reverse the hearing officer’s Order that the “Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers’ Compensation Act, and Commissioner’s Rules” and render a new decision that Carrier 1 and Carrier 2 are ordered to pay benefits in accordance with this decision, the Texas Workers’ Compensation Act, and Commissioner’s Rules. We affirm the hearing officer’s

¹ Section 410.033 can be looked to for guidance in determining carrier liability.

determinations on the issues of compensable injury, DOI, and disability. We affirm the hearing officer's determination that both Employer 1 and Employer 2 were the claimant's employers on _____, for purposes of workers' compensation.

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

**RUSSELL RAY OLIVER, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723.**

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

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge