APPEAL NO. 021735
FILED ON JULY 31, 2002

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 opened on May 17, 2002, and closed on June 13, 2002, in (City 1). The hearing officer determined that respondent 1 (claimant) is an employee entitled to Texas workers' compensation benefits for her injury of _____; that the claimant is a covered employee under a policy issued by the appellant (carrier) to respondent 2 (the employer, hereafter referred to as subclaimant) for her injury of _____; and that the subclaimant is entitled to reimbursement of indemnity benefits paid to or for the claimant for her injury of _____. The carrier appeals, asserting that the claimant does not meet the requirements of Section 406.071 for coverage of her injury, which occurred in another state, because she was not recruited or hired in Texas. The carrier seeks reversal of the finding that coverage exists for the claimant and that the subclaimant is entitled to reimbursement. The claimant responds, urging affirmance. The subclaimant also responds.

DECISION

Affirmed.

In this extraterritorial coverage case, the facts are largely undisputed, and the decision turns on the sufficiency of the evidence to support the hearing officer's findings. Section 406.071(a) provides, in part, that an employee who is injured while working in another jurisdiction is entitled to all rights and remedies under this subtitle if (1) the injury would be compensable if it had occurred in this state; and (2) the employee has significant contacts with this state or the employment is principally located in this state. Section 406.071(b) provides that an employee has significant contacts with this state if the employee was hired or recruited in this state and the employee (1) was injured not later than one year after the date of hire or (2) has worked in this state for at least 10 working days during the 12 months preceding the date of injury.

The evidence established that the subclaimant wanted to bring the production "Annie, Get Your Gun," to City 1. There are two ways to make that happen. The first is for a sponsor to contact someone who is producing that production and ask them to bring it to the city; the sponsor serves as the presenter of the production. The second way is for the sponsor to actually produce the production, which entails hiring the cast members, rehearsals, and then having the production performed, usually at multiple locations over a several-month period. Since the subclaimant could not find an existing production which could come to City 1 to present the production, it was decided that the subclaimant would produce the production, with the opening run of two weeks in City 1, followed by approximately two months on tour to other cities around the country. A co-producer was found to continue sponsorship of the production for an additional three months at several other locations throughout the United States. The subclaimant,

working out of its only office location (in City 1), advertised in trade publications, announcing auditions to be held in City 1 and in (City 2). The claimant and several other individuals residing in the City 2 area, as well as from other locations, were hired, signed contracts in City 2, and rehearsed for four weeks in and near City 2. We note that the contract between the claimant and the subclaimant incorporated the Actor's Equity Association Rules, which required the subclaimant to obtain and maintain workers' compensation insurance. All individuals associated with the production were paid by the subclaimant's office in City 1. The rehearsals moved to City 1 about one week before opening, and the two-week run (16 performances) in City 1 followed. The production moved on to additional cities, and had been out of the state for nearly four weeks when the claimant sustained an injury to her left knee in (City 3). The evidence supports the finding of the hearing officer that the claimant's injury would be compensable if it had happened in Texas, that the injury occurred within one year of the claimant's date of hire, and that she had worked in the state of Texas for more than 10 working days before the injury. The evidence also supports the findings that the claimant temporarily resided in Texas while working for the subclaimant, and that she spent a substantial part of her working time in the state of Texas.

The carrier's principal argument is that the claimant does not have "significant contacts with this state" because she was not hired or recruited in the state, and therefore is not covered for Texas workers' compensation benefits. That argument ignores the other half of Section 406.071(a)(2), "or the employment is principally located in this state," which the hearing officer specifically relies upon in his Finding of Fact No. 9. There was conflicting evidence presented in this case, and the arguments for both positions were fully developed. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the factual findings of the hearing officer. Pursuant to Section 406.071, the hearing officer's factual findings are sufficient to support his conclusion that the claimant is entitled to benefits under the 1989 Act. The evidence likewise supports the conclusion that the subclaimant is entitled to reimbursement of indemnity and medical benefits from the carrier.

The decision and order of the hearing officer are affirmed.

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**.

_____
Michael B. McShane
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge