APPEAL NO. 021771
FILED SEPTEMBER 3, 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 (CCH) was held on June 5, 2002. The hearing officer resolved the disputed issues by deciding that respondent 2 (claimant) sustained a compensable injury on _____, and that on that date, and at the time of the injury, the claimant's employer for purposes of the 1989 Act was (Employer 1). The appellant (carrier 1), the workers' compensation insurance carrier for (Employer 1), appeals the determination and contends that (Employer 2) was the claimant's employer at the time of the date injury. In its response, respondent 1 (carrier 2), the workers' compensation insurance carrier for (Employer 2), urges affirmance of the hearing officer's decision. The appeal file contains no response from the claimant.

DECISION

The hearing officer's decision is affirmed.

The evidence reflects that (Employer 2) is a provider of temporary staffing services. Through a placement from (Employer 2), the claimant began working at (Employer 1) several months prior to the date of injury. Although (Employer 2) and (Employer 1) at one point had a written contract for staffing services, it had expired prior to the claimant's date of injury. The claimant testified that he was paid by (Employer 2), but that his work was directed and supervised by (Employer 1), and that at the time of his injury, he had been directed by (Employer 1)'s forklift driver to get onto the pallet on the forks of the forklift, from which he fell. The hearing officer, applying the borrowed servant doctrine, determined that at the time of the injury, the claimant's employer for purposes of the 1989 Act was (Employer 1).

Texas courts have recognized that a general employee of one employer may become the borrowed servant of another employer. The determinative question then becomes which employer had the right of control of the details and manner in which the employee performed the necessary services. Carr v. Carroll Company, 646 S.W.2d 561 (Tex. App.-Dallas 1982, writ ref'd n.r.e.). We note that in Texas Workers' Compensation Insurance Fund v. DEL Industrial, Inc., 35 S.W.3d 591 (Tex. 2000), the court held that the Staff Services Leasing Act (SSLA), Texas Labor Code Chapter 91, supercedes the common law right-of-control test in determining employer status of leased employees for workers' compensation purposes. However, (Employer 2) was not licensed under the SSLA. The hearing officer determined that on the date of injury, (Employer 2) was a licensed provider of temporary common workers under Chapter 92 of the Texas Labor Code, entitled Temporary Common Worker Employers (TCWE). In Richmond v. L. D. Brinkman & Co. (Texas) Inc., 36 S.W.3d 903 (Tex. App.-Dallas 2001, pet. denied), the court determined that the common law right-of-control test is not superceded by Chapter 92 (TCWE) of the Texas Labor Code. The hearing officer is the sole judge of the weight

and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer did not err in applying the right-of-control test and in determining that at the time of the injury, the claimant was the borrowed servant of (Employer 1). The hearing officer's decision is supported by sufficient evidence and is 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).

The hearing officer determined that carrier 1, (Employer 1)'s workers' compensation insurance carrier, is liable for workers' compensation benefits for the claimant's compensable injury. Carrier 1 asserts that this is unfair because (Employer 2) received from (Employer 1) payments for premiums paid to carrier 2 for workers' compensation coverage, but carrier 1 cites to no legal authority to support its assertion that carrier 2 must be the carrier liable for benefits in this borrowed servant case where there are two workers' compensation insurance carriers. Consequently, carrier 1 has not shown that the hearing officer erred as a matter of law in determining that it is liable for workers' compensation benefits under the facts presented.

The carriers did not contend at the CCH that the claimant was not injured in the course and scope of his employment. To the extent that carrier 1's appeal can be construed as an appeal of the determination that the claimant sustained a compensable injury, because of its challenge to Conclusion of Law No. 4, we conclude that the hearing officer's determination that the claimant sustained a compensable injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier (carrier 1) is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

C T CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

The true corporate name of the insurance carrier (carrier 2) is **LEGION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Robert W. Potts
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge