

APPEAL NO. 032459  
FILED OCTOBER 29, 2003

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 August 12, 2003. The hearing officer determined that respondent's 1 and 2 (claimant beneficiaries) "did not elect to pursue a remedy and recovery under the compensation laws of the State of Florida which would bar recovery under the Texas Workers' Compensation Act" and that the claimant beneficiaries are "entitled to all rights and remedies under the Texas Workers' Compensation Act."

The appellant (carrier) appeals, contending that the Florida Workers' Compensation Act is the exclusive remedy and that since the claimant beneficiaries have received benefits under the Florida Act they are precluded from obtaining Texas Workers' Compensation Act benefits. The claimant beneficiaries urge affirmance, citing authority for their position.

DECISION

Affirmed.

The facts are not in dispute. The decedent, a Texas resident, was employed by the employer, a "foreign limited liability corporation" with operations in several states including Texas and Florida, in Texas in November 1999. The decedent worked continuously in Texas until May 2002, when the employer sent him to work in Florida on a temporary assignment. The evidence supports the hearing officer's comment that "once the work was completed in Florida [the decedent] would return to Texas to work." In order to obtain the Florida contract the employer was required to carry Florida workers' compensation insurance. The decedent sustained a compensable fatal injury on \_\_\_\_\_. Under the applicable Florida workers' compensation law the requirement for reporting and initiating a claim is on the employer. The employer reported the death on July 22, 2002, and the Florida carrier commenced payment of death benefits to the statutory beneficiaries on July 29, 2002. On October 24, 2002, the claimant beneficiaries filed a claim for Texas workers' compensation death benefits.

The carrier contends that the Florida Act is the exclusive remedy, that the employer (and the Florida carrier) acted properly and that the claimant beneficiaries received benefits under the Florida Act. The hearing officer found that the decedent had significant contacts in Texas, specifically that he had been hired in Texas and that he had worked in Texas "more than 10 days prior to the date of death." The hearing officer further found that the decedent was on a temporary assignment in Florida, that the claimant beneficiaries "did not seek to be paid benefits" under Florida law, and that the claimant beneficiaries had not made a choice to be paid Florida benefits.

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 the employee was hired or recruited in Texas and had worked in Texas "for at least 10 working days during the 12 months preceding the date of injury." The hearing officer's determinations support the conclusion that the claimant beneficiaries are entitled to Texas benefits.

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.

The hearing officer specifically determined that the claimant beneficiaries did not seek to be paid benefits under Florida Law. It therefore follows that pursuant to Section 406.075(b) that the benefits the claimant beneficiaries received will be credited against the Texas death benefits.

We reject the carrier's assertion that the Florida law is exclusive (the exclusive remedy) in that neither the decedent nor the claimant beneficiaries were a party to the employer's contract for Florida workers' compensation coverage and fairly clearly the decedent was employed and actually worked in Texas and had a reasonable expectation of having Texas coverage. The employment in Florida on a temporary assignment does not abrogate the Texas workers' compensation rights unless the claimant beneficiaries had elected to pursue their rights under Florida law. Section 406.075(a). As found by the hearing officer, the claimant beneficiaries took no action to obtain workers' compensation benefits from the Florida carrier and the benefits that were paid were triggered by the employer's action and consequently this case falls precisely under the provisions of Section 406.075(b).

The hearing officer's decision is supported by sufficient evidence, is not legally incorrect, and is not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN GUARANTY AND LIABILITY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251-2237.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Margaret L. Turner  
Appeals Judge