

APPEAL NO. 042246
FILED NOVEMBER 1, 2004

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 3, 2004, with the record closing on August 6, 2004. The disputed issue was whether (first company) (CS)/(second company) (AP) (together CS/AP) or (third company) (AFP) was respondent 1's (claimant) employer for the purposes of the 1989 Act at the time of the claimed injury on _____. The hearing officer resolved the disputed issue by deciding that at the time of the claimed injury on _____, AFP was the claimant's employer for purposes of the 1989 Act. The hearing officer ordered respondent 2 (carrier 2) to pay benefits. Appellant (carrier 1) appeals a finding of fact that it provided workers' compensation insurance coverage for CS/AP. Carrier 2 has not appealed. Neither claimant nor carrier 2 filed a response. The hearing officer's determination that at the time of the claimed injury on _____, the claimant's employer for the purposes of the 1989 Act was AFP has not been appealed and has become final under Section 410.169, as has the hearing officer's order for carrier 2 to pay benefits.

DECISION

Affirmed.

It is undisputed that the claimant sustained a work-related injury on _____. The claimant's position was that AFP was his employer on the date of the injury. It is undisputed that carrier 2 was AFP's workers' compensation insurance carrier on the date of injury. Carrier 2's position was that CS/AP was the claimant's employer on the date of injury. Carrier 1's position was that it was an observer at the CCH and that it had no workers' compensation insurance policy covering CS/AP. In evidence is a certificate of liability insurance listing workers' compensation as the type of insurance, naming AP as the insured and CS as the alternate employer, naming carrier 1 as the insurer, and providing a policy period covering the date of injury. Carrier 1 said that there was ongoing litigation between it and another company regarding writing of insurance policies and that is why it was at the CCH as an observer.

The hearing officer resolved the disputed issue by deciding that at the time of the claimed injury on _____, the claimant's employer for the purposes of the 1989 Act was AFP, and he ordered carrier 2 to pay benefits in accordance with his decision, the 1989 Act, and rules of the Texas Workers' Compensation Commission (Commission). Carrier 2 has not appealed the hearing officer's decision. Carrier 1 has appealed the hearing officer's Finding of Fact No. 2 that carrier 1 provided workers' compensation insurance coverage for CS/AP on _____. Carrier 1 requests that Finding of Fact No. 2 be deleted from the hearing officer's decision because there was no issue regarding insurance coverage, there was no evidence regarding insurance coverage, and carrier 1 has been treated as a non-party because a copy of the hearing

officer's decision was not provided to it by the Commission (carrier 1's attorney notes that he received a copy of the hearing officer's decision from carrier 2's attorney on September 9, 2004). While carrier 1 is listed in the style of the hearing officer's decision, it is not listed on the Commission's cover sheets to the decision.

The Commission should have furnished carrier 1 a copy of the hearing officer's decision because carrier 1 did appear at the CCH and it is named as a party in the style of the hearing officer's decision. According to Commission records, carrier 1 and carrier 2 have the same Austin representative, and that Austin representative acknowledged receipt on the cover letter to the hearing officer's decision with carrier 2's name on it. However, since carrier 1's name does not appear anywhere on the cover letters, it is unclear whether the Austin representative would have been put on notice of carrier 1's involvement in the case. For purposes of this appeal, we accept carrier 1's statement that it did not receive a copy of the hearing officer's decision until September 9, 2004.

We believe that carrier 1 was a party at the CCH. It appears that the hearing officer also believed that carrier 1 was a party in that he listed carrier 1 in the style of his decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 140.1(4) (Rule 140.1(4)) defines "Party to a proceeding" as "a person entitled to take part in a proceeding because of a direct legal interest in the outcome." The benefit review conference (BRC) report reflects that carrier 1 was represented at the BRC and the CCH record reflects that carrier 1 was represented at the CCH, although through its own choice it had limited participation at the CCH. The aforementioned certificate of insurance is some evidence that carrier 1 had a direct legal interest in the outcome of the proceeding.

We agree that the only disputed issue involved who was the claimant's employer on the date of injury. However, in order to be able to award benefits (see Rule 142.16(a)(2)), the hearing officer would have to make a determination as to whether the claimant's employer had workers' compensation coverage on the date of injury, and that involves determining, usually by stipulation, who the employer's carrier was on the date of injury. In light of the certificate of insurance that was in evidence, we cannot conclude that the hearing officer erred in making Finding of Fact No. 2 that carrier 1 provided workers' compensation insurance coverage for CS/AP on the date of injury. Although carrier 2 is liable for benefits, we find no basis for deleting Finding of Fact No. 2 from the hearing officer's decision.

The hearing officer's decision and order is affirmed.

The true corporate name of insurance carrier 1 is **REALM NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GERALD DORSEY
8080 NORTH CENTRAL EXPRESSWAY, SUITE 1450
DALLAS, TEXAS 75206-1823.**

The true corporate name of insurance carrier 2 is **BITUMINOUS CASUALTY CORPORATION** and the name and address of its registered agent for service of process is

**GLEN CAMERON
222 WEST LAS COLINAS, SUITE 1720
IRVING, TEXAS 75039.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge