APPEAL NO. 022258-s
FILED SEPTEMBER 12, 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 July 2, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the he had disability from _____, and continuing through February 28, 2002. The appellant (carrier) appealed the hearing officer's injury and disability determinations, arguing essentially that the claimant's undocumented alien status in the United States precluded him from obtaining Texas Workers' Compensation benefits under the 1989 Act. The file does not contain a response from the claimant.

DECISION

Affirmed.

The carrier contends, essentially, that the claimant, as an illegal or undocumented alien, cannot enter a valid employment contract with the employer because of his illegal status in the United States and in violation of immigration laws; therefore, he is not entitled to workers' compensation benefits under the 1989 Act. The carrier relies primarily on Hoffman Plastics Compounds, Inc. v. National Labor Relations Board (NLRB), 122 S. Ct. 1275 (2002), in which an illegal alien who organized a union was terminated by the employer, and the NLRB ordered the employer, among other sanctions, to offer reinstatement and backpay to the affected employees. The Supreme Court held that to allow the NLRB to award backpay to illegal aliens would unduly trench upon explicit statutory prohibitions critical to federal immigration policy, as expressed in the Immigration Reform and Control Act of 1986 (IRCA). The carrier contends that to award workers' compensation benefits to the claimant would be in violation of immigration laws.

We disagree. In Hoffman, *supra*, the case was limited to backpay benefits awarded by the NLRB, a federal agency, and in the instant case, the 1989 Act specifically provides that "a resident or nonresident alien employee or legal beneficiary is entitled to compensation" under Section 406.092(a). In Texas Workers' Compensation Commission Appeal No. 94211, decided April 6, 1994, we held that under Section 406.092(a), the fact that an employee's status as an alien whose entry into the United States may have been contrary to immigration laws does not in itself preclude the receipt of benefits under the 1989 Act for which the alien otherwise qualifies. In Commercial Standard Fire and Marine Company v. Galindo, 484 S.W.2d 635 (Tex. Civ. App.-El Paso 1972, writ ref'd n.r.e.), the court of appeals held that "a person residing in this State [Texas] whose entry may be contrary to the immigration laws is not barred, by that reason alone, from receiving workmen's compensation benefits." The court notes that "an illegal alien seeking recovery for work, labor and services contracted for after his entry into the United States was protected under the

equal protection of the laws clause of the United States Constitution." *See also* 1A LARSON, WORKMEN'S COMPENSATION LAW Sec. 35.20, for the general proposition that ". . . illegal entry into this country does not deprive an alien of compensation rights." The hearing officer did not err in determining that the claimant is not precluded from receiving benefits under the 1989 Act by reason of his status as an illegal alien at the time of the said injury sustained on _____. We note that federal law does not automatically preempt matters of unique state concern. Workers' compensation laws and benefits are concerns unique to the States and it is state law that controls the entitlement to workers' compensation benefits. *See* Texas Workers Compensation Commission Appeal No. 990686, decided May 19, 1999.

Whether the claimant sustained a compensable injury and had disability are factual questions for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was persuaded by the claimant's testimony and documents in evidence that the claimant was an employee of the employer on _____. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We have reviewed the matters complained of on appeal and conclude that the hearing officer's decision is supported by sufficient evidence.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN STATES INSURANCE COMPANY OF TEXAS** and the name and address of its registered agent for service of process is

LEON CROCKETT
1600 NORTH COLLINS BLVD., SUITE 300
RICHARDSON, TEXAS 75080.

_____
Veronica Lopez
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Michael B. McShane
Appeals Judge