

APPEAL NO. 000954

On April 12, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issue by deciding that the claimed injury occurred while appellant (claimant) was in a state of intoxication thereby relieving respondent (carrier) of liability for compensation. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in his favor. Carrier requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

Claimant said that on _____, in the course of his truck-driving duties for employer, he was driving an old tractor-trailer with steering that pulled to the right; that when he adjusted a mirror the truck headed off the road; that the trailer tires went over a culvert; that the tractor and trailer turned over; that he was injured in that accident; that an ambulance took him to a minor emergency clinic; that after he was given a pain drug and another drug, which medical records reflect were Demerol and Vistaril, by paramedics in the ambulance, he gave a urine sample at the clinic; and that he was then transported to a hospital the same day. It is not disputed that claimant was injured in the accident, that he was given Demerol and Vistaril by paramedics before he gave a urine sample, and that he was taken first to the clinic and then to the hospital by ambulance. A drug screen test report bearing claimant's name and a urine collection date of _____, records positive findings for cocaine metabolite and benzodiazepine. Due to the accident of _____, claimant was issued a citation for unsafe speed by the Texas Department of Public Safety. Claimant testified that he has never in his life used cocaine and that he did not ingest any controlled substances prior to the accident. Three coworkers of claimant's signed written statements that they talked to claimant on _____, before the accident occurred and that claimant did not seem to be drunk or on drugs.

The definition of intoxication in Section 401.013(a) that applies to this case is not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance or controlled substance analogue. Section 406.032 provides that an insurance carrier is not liable for compensation if the injury occurred while the employee was in a state of intoxication. Courts have held that a claimant need not prove he was not intoxicated as there is a presumption of sobriety. Bender v. Federal Underwriters Exchange, 133 S.W.2d 214 (Tex. Civ. App.-Eastland 1939, writ dismissed judgment corrected). However, when a carrier presents evidence of intoxication, raising a question of fact, the claimant then has the burden to prove he was not intoxicated at the time of the injury. March v. Victoria Lloyds Insurance Company, 773 S.W.2d 785 (Tex. App.-Fort Worth 1989, writ denied).

The hearing officer found that during the course and scope of his employment on _____, claimant did not have the normal use of his mental or physical faculties resulting from the voluntary introduction into his body of a controlled substance and concluded that the claimed injury occurred while claimant was in a state of intoxication thereby relieving carrier of liability for compensation. Claimant contends that the drug test report is not reliable, that under current case law carrier failed to show that the drug test was scientifically reliable, that carrier presented no evidence of intoxication, and that the great weight and preponderance of the evidence shows that he was not intoxicated. Whether claimant was intoxicated at the time of injury was a question of fact for the hearing officer to determine from the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer did not find claimant credible. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge