

APPEAL NO. 010692

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 March 5, 2001. The hearing officer resolved the disputed issues by concluding that the appellant's (claimant) work-related injury on _____, occurred while the claimant was intoxicated, as defined by Section 401.013 of the 1989 Act, due to his use of statutorily controlled substances and dangerous drugs, thereby relieving the respondent (carrier) of liability for paying compensation to him, pursuant to Section 406.032(1)(A) of the 1989 Act. In addition, the hearing officer concluded that because the claimant did not sustain a compensable injury, he did not have disability. The claimant appeals and urges reversal based upon the insufficiency of the evidence.¹ The carrier responds and requests that the hearing officer's decision and order be affirmed in all respects.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's _____,² work-related injury was not compensable because the claimant was intoxicated, as defined by Section 401.013 of the 1989 Act, due to his use of statutorily controlled substances and dangerous drugs, thereby relieving the carrier of liability for paying compensation under Section 406.032(1)(A). Testimonial and documentary evidence on the record supports the hearing officer's findings and conclusions on this issue, including the testimony of the physician who reviewed and explained the drug screen results and the medical records of the drug screen results. All show that the claimant tested positive for cocaine and marijuana on the day of his accident. The claimant offered testimony that, despite the drug screen results, he had full use of his mental and physical faculties at the time of his accident.

While the drug screen is not determinative of whether the claimant was intoxicated,³ it, along with the testimony of the carrier's expert, shifted the burden of proof to the claimant to show he had normal use of his mental and physical faculties. The hearing officer made a finding of fact (No. 4) that the claimant did not have the normal use of his mental or physical faculties.

¹The claimant says he's challenging legal, not factual, errors by the hearing officer; but, upon close reading, it is plain that he is making a sufficiency challenge.

²While the hearing officer states that the date of injury is _____, in his statement of the evidence, it is apparent from both the documentary evidence and the testimony that the accident occurred _____.

³The comments by the hearing officer implying that the Appeals Panel has set some sort of level of marijuana in the system to be dispositive of intoxication is incorrect. The legislature has not set any presumptive level for marijuana intoxication and the Appeals Panel would not presume to do so.

Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disturb the contested 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Applying this standard, we cannot say the hearing officer erred in finding that the claimant did not meet his burden of proving he had the normal use of his mental or physical faculties at the time of his injury.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition, disability depends upon a compensable injury. See Section 401.011(16).

For these reasons, we affirm the hearing officer's decision and order.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge