APPEAL NO. 010912
FILED JUNE 4, 2001

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 April 9, 2001. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; (2) the claimed injury did not occur while claimant was in a state of intoxication, as defined by Section 401.013, from the introduction of a controlled substance; and (3) the claimant had disability from November 24, 2000, through the date of the hearing. The appellant (carrier) appealed each of the hearing officer's determinations on sufficiency grounds. No response was filed.

DECISION

Affirmed.

Compensable Injury

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. The claimant had the burden to prove that he sustained damage or harm to the physical structure of the body, which arose out of and in the course and scope of his employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate-reviewing tribunal, 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 and we do not find them so in this case. 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).

Intoxication

The hearing officer did not err in determining that the injury did not occur while the claimant was in a state of intoxication from the introduction of a controlled substance. In the case of a controlled substance (Section 481.002, Health and Safety Code), as distinguished from alcohol, intoxication is the state of "not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of [the controlled substance.]" Section 401.013(a)(2). The sobriety of the injured employee at the time of the injury is presumed but when the carrier rebuts that presumption with probative evidence of intoxication, the burden shifts to the employee to prove that he or she was not intoxicated at the time of the injury. In view of the evidence presented, we cannot

conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Disability

The hearing officer did not err in determining that the claimant had disability from November 24, 2000, through the date of the hearing. Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 000758, decided May 25, 2000. The fact that a claimant resigned, retired, or was involuntarily discharged from employment may be considered but does not foreclose the existence of disability. Texas Workers' Compensation Commission Appeal No. 970089, decided February 28, 1997. The hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge