APPEAL NO. 010964
FILED JUNE 8, 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 (CCH) was held on April 10, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury_____, and suffered disability for the period of _____, through March 30, 2001. The hearing officer also resolved that the claimant did not engage in horseplay or willfully attempt to injure himself or another person while at work _____. The appellant (carrier) appeals and seeks reversal on sufficiency grounds. There is no response in the file from the claimant.

DECISION

Affirmed.

The hearing officer did not err in deciding that the claimant sustained a compensable injury _____, due to a fall at his employment. The evidence adduced at the CCH supports the hearing officer's determination. The claimant testified that he fell and sustained a head injury while in restroom at his employment. The medical records introduced bear out the injury. The carrier presented testimony from three individuals, two of whom stated that they came upon the claimant as he lay unconscious on the floor of the restroom, with a coworker present who was calling for help and extremely distraught. A statement from the coworker, present at the time of the fall, corroborates the claimant's testimony that after he washed his hands and turned to leave, he slipped on something, fell, and was knocked unconscious.

The carrier argues that the claimant and his friend were either engaged in horseplay or that the claimant intended to harm himself or his coworker. The testimony supporting this argument was scant and evidently the hearing officer did not find it probative. She observed that carrier's theory of horseplay was speculative. Consequently, the hearing officer did not err in determining that the claimant did not engage in horseplay or intend to injure himself or another _____. *See* Sections 406.032(2) and 406.032(1)(b) of the 1989 Act; Texas Workers' Compensation Commission Appeal No. 91029, decided October 25, 1991; Texas Workers' Compensation Commission Appeal No. 990592, decided May 4, 1999. The hearing officer is charged to determine the questions of fact of whether horseplay is a producing cause of the injury. Texas Workers' Compensation Commission Appeal No. 93013, decided February 16, 1993.

The hearing officer did not err in determining that the claimant had disability from _____ through March 30, 2001. Evidence supporting the hearing officers decision includes the testimony of the claimant and the records of his treating doctor. *See* Section 401.011(16).

The parties presented evidence that genuinely conflicts on the disputed issues. Pursuant to Section 410.165(a), 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 challenged 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).

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

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge