

APPEAL NO. 011568  
FILED AUGUST 21, 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 June 13, 2001. The hearing officer resolved the disputed issue by determining that the appellant's (claimant) horseplay was a producing cause of the claimed injury he sustained on \_\_\_\_\_, (the date of injury was erroneously stated as \_\_\_\_\_ in the issues, but correctly stated everywhere else in the decision and order), and, therefore, the respondent (carrier) is relieved of liability for compensation. The claimant appealed and the carrier responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's horseplay was a producing cause of the injury he sustained on \_\_\_\_\_, thereby relieving the carrier of liability. Section 406.032(2) provides that an insurance carrier is not liable for compensation if the employee's horseplay was a producing cause of the injury. Conflicting evidence was presented on the disputed issue. The hearing officer determined that the claimant's testimony was not credible. Section 410.165(a) provides that 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 the evidence. It was for the hearing officer, as trier of fact, 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 trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer's decision is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

We affirm the decision and order of the hearing officer.

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Michael B. McShane  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Susan M. Kelley  
Appeals Judge