

APPEAL NO. 011963
FILED SEPTEMBER 28, 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 July 18, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury, or any injury, on _____, when the tires on his truck caught fire, and thus that he had no disability. In addition, the hearing officer determined that while the claimant intentionally caused damage to his truck, he was neither intentionally attempting to injure himself nor engaged in horseplay at the time of the incident; and that the respondent (carrier) did not waive its right to contest the compensability of the injury under Section 409.021(c), as it timely contested the claim. The claimant appeals the injury and disability determinations on sufficiency grounds. The claimant also erroneously appealed the intentional act and horseplay determinations which were in his favor, as well as, the determination that he "intentionally caused damage and abuse to Employer's truck that Claimant was driving and operating by starting the truck fire on _____." However, he did not appeal the carrier waiver determination; thus, that determination has become final under Section 410.169. In its response, the carrier urges affirmance.

DECISION

Affirmed, as modified.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The issue of whether the claimant sustained a compensable injury was a question of fact for the hearing officer. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer noted that he found the claimant neither credible nor truthful, and that he believed the doctors who examined the claimant based their diagnoses of injury solely on the subjective complaints and history given to them by the claimant, thus tainting the medical records showing injury. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not so find here.

We likewise affirm the hearing officer's determination that the claimant had no disability as a result of the _____, incident. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

With respect to the claimant's challenge to the hearing officer's determinations that the claimant neither intentionally injured himself nor was engaged in horseplay at the time

of his alleged injury, we will not address the argument. The findings and conclusions regarding those matters were in favor of the claimant and thus he did not have any basis for appealing those determinations.

Finally, we note that the hearing officer made a finding that the “Claimant intentionally caused damage and abuse to Employer’s truck that Claimant was driving and operating by starting a truck fire on _____.” The only affirmative defenses at issue at the hearing were the claimant’s intentional injury of himself or others and the claimant’s engaging in horseplay pursuant to Sections 406.032 (1) and (2). Finding of Fact No. 2 does not concern those issues; thus, it is surplusage, which is unnecessary to the decision, and we strike it from the decision.

The hearing officer’s decision and order are affirmed, as modified to strike Finding of Fact No. 2.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge