

APPEAL NO. 012026
FILED SEPTEMBER 26, 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 August 2, 2001. With regard to the issues before her, the hearing officer determined the following:

1. The appellant (claimant) did not sustain a compensable injury while in the course and scope of his employment;
2. The claimed injury of _____, occurred while the claimant was in a state of intoxication as defined in Section 401.013, from the induction of a controlled substance, thereby relieving the respondent (carrier) of liability; and,
3. The claimant did not have disability since he did not have a compensable injury.

The claimant appealed, arguing that the hearing officer erred in regard to compensability, disability, and intoxication. The carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The claimant testified that he was employed for almost six years as a bricklayer for the employer. The claimant testified that on Monday, _____, he was coming down a scaffold when he slipped and fell almost 14 feet to the ground while carrying his tools. The claimant testified that he reported the injury to his supervisor and that the supervisor did not believe that he was injured. The claimant stated that his supervisor called him at home to request that the claimant seek medical attention at a medical facility. The claimant testified that he injured his low back, left shoulder, and left knee. The claimant was drug screened for controlled substances before he received medical care, and the test result was positive for cocaine metabolite. The claimant testified that he consumed cocaine the Saturday before the date of the claimed injury.

The evidence sufficiently supports the hearing officer's determination that on _____, the claimant did not sustain a compensable injury in the course and scope of employment; that the claimant was in a state of intoxication from the induction of a controlled substance; and that the claimant did not have disability. *See, generally*, Sections 401.011(10), 401.013, and 401.011(16). The credibility of the claimant was an issue in this case. The hearing officer determined that the claimant did not fall from the

scaffold as he claimed. The hearing officer also commented that the claimant “was not a credible witness” and that at the time of the claimed fall the “claimant was intoxicated, and really did not know what happened, if anything.” The hearing officer did not err in shifting the burden onto the claimant to prove that he was not intoxicated based on the drug screen and the toxicologist’s testimony. Section 401.013(a)(2) defines intoxication as not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of an alcoholic beverage, a controlled substance, or a controlled substance analog. The Appeals Panel has held that a positive test for a controlled substance shifts the burden to the claimant to prove that he was not intoxicated at the time of the injury. Texas Workers' Compensation Commission Appeal No. 91018, decided September 19, 1991; Texas Workers' Compensation Commission Appeal No. 92193, decided July 2, 1992. An explanation of the test results may have probative value. Texas Workers' Compensation Commission Appeal No. 92224, decided July 16, 1992; Texas Workers' Compensation Commission Appeal No. 92251, decided July 9, 1992.

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. 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 of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel 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).

The hearing officer’s decision and order are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge