

APPEAL NO. 012482
FILED NOVEMBER 29, 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 September 25, 2001. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) injury occurred while the claimant was in a state of intoxication from the introduction of a controlled substance into his body thereby relieving the respondent (carrier) of liability for compensation. In his appeal, the claimant argues that the hearing officer's determination that he was intoxicated is against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's work-related injury was not compensable because the claimant was intoxicated, as defined by Section 401.013 of the 1989 Act, due to his use of statutorily controlled substances, thereby relieving the carrier of liability for paying compensation under Section 406.032(1)(A). Documentary evidence in the record supports the hearing officer's findings and conclusions on this issue, including the drug screen, the confirmatory testing, and the reports of two toxicologists offered by the carrier. That evidence shows that the claimant tested positive for marijuana on the day of his accident. The claimant offered testimony and written statements from two members of his crew that, despite the drug screen results, he had full use of his mental and physical faculties at the time of his accident. Based upon the drug test results and the toxicology reports, the hearing officer properly shifted the burden of proof to the claimant to show he had normal use of his mental and physical faculties at the time of his injury. The hearing officer specifically found that the claimant did not have the normal use of his mental or physical faculties. Pursuant to Section 410.165(a) of the 1989 Act, 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 Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Ins. Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). We will not disturb the contested 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). Applying this standard, we cannot say the hearing officer erred in finding that the claimant did not meet his burden of proving he had the normal use of his mental or physical faculties at the time of his injury. Thus, no basis exists for us to reverse the determination that the carrier is relieved of liability for workers' compensation benefits.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PETROSURANCE CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**ROBERT LEE
2221 E. LAMAR, SUITE 500
ARLINGTON, TEXAS 76006.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge