

APPEAL NO. 020421
FILED APRIL 3, 2002

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 January 15, 2002. The hearing officer resolved the disputed issues before her by determining that the appellant's (claimant) horseplay was a producing cause of the claimed injury, thereby relieving the respondent (self-insured) of liability for compensation, and that because there is no compensable injury, there can be no resultant disability. The claimant appealed on sufficiency grounds. The self-insured responded, asserting that the claimant's appeal was untimely and otherwise urging affirmance.

DECISION

We affirm.

As to the self-insured's assertion that the claimant's appeal is untimely, we refer the self-insured to Section 410.202(d), amended effective June 17, 2001, to provide that Saturdays, Sundays, and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal must be filed. The assertion of untimeliness is without merit.

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 self-insured 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 claimant testified and presented evidence to show that the foot race he was involved in at the time of his injury was sponsored by his employer; that it was done with the knowledge and consent of his supervisors; and that because it was done for public relations purposes, the employer derived a benefit from the event. The self-insured presented evidence to show that the race was not sponsored the employer; that it was not done with the approval and consent of the claimant's supervisors; and that it was not an approved public relations event. 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 of 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 and to decide what facts the evidence had established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, 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. Thus, no sound basis exists for us to disturb the decision on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the self-insured is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RV
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Judge