

APPEAL NO. 020478  
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 (CCH) was held on February 4, 2002. On the issue before her, the hearing officer held that the death of the appellant's (claimant/spouse) husband (deceased) was not the result of the compensable injury sustained on \_\_\_\_\_. The claimant/spouse has appealed and argues that the death resulted from medication prescribed for the compensable injury. The respondent (carrier) files a response urging affirmance.

DECISION

Affirmed.

This case is a claim for death benefits. The claimant present at the CCH was the claimant/spouse. It was undisputed that the deceased died on \_\_\_\_\_; that on \_\_\_\_\_, he sustained a compensable injury when he was hit in the face with a steel beam; that he suffered from cognitive dysfunction and depression as a result of the injury; that he was given prescription medications for his injuries and that on April 9, 2001, an autopsy revealed cocaine metabolites in his blood. (It should be noted that the defense is based on a theory of "independent, intervening cause," not the intoxication defense set out in Section 406.032.)

The claimant/spouse presented evidence from the medical examiner that performed the autopsy who opined that the deceased's death was not cause by ingestion of cocaine, but rather by "multiple drug intoxication" from the prescription medications that the decedent was prescribed for treatment of his compensable injury. The carrier presented evidence from a toxicologist who opined that the high concentration of cocaine metabolites in the decedent's blood revealed that the decedent was a chronic cocaine user and died from ingesting cocaine, not from the use of prescription medication.

The hearing officer made findings of fact and concluded that the decedent's death was not the result of the compensable injury sustained on \_\_\_\_\_. The claimant/spouse had the burden to prove that her spouse's death resulted from an injury sustained in the course and scope of the deceased's employment. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Appeal No. 950084, decided February 28, 1995. An appellate-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Appeal No. 950084. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and

unjust. Appeal No. 950084. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. 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 insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

---

Susan M. Kelley  
Appeals Judge

CONCUR:

---

Chris Cowan  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge