APPEAL NO. 021665
FILED AUGUST 20, 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 May 28, 2002. The hearing officer determined that the respondent (claimant) was not engaged in horseplay so the appellant (carrier) is not relieved of liability for the claimed injury; that the claimant was in the course and scope of his employment at the time of the incident; and that the claimant's disability began _____, and ended October 24, 2001. The carrier appealed, arguing that the hearing officer erred in determining that the claimant was not engaged in horseplay, that he was in the course and scope of his employment and that he had disability. The claimant filed a response urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not engaged in horseplay and that he was in the course and scope of employment. The carrier argues that the claimant was not in the course and scope of employment because he was not furthering the business of the employer at the time he and his coworker were involved in the _____, incident. The claimant testified that in preparation for his employment he was required everyday to fill the company truck with gasoline, fill a 100-gallon tank with diesel fuel, and fill water tanks with drinking water for the construction crew. The claimant testified that he and another coworker had exchanged insulting words during and after the preparation of the trucks and the tanks for work and that when the claimant walked away from the coworker, he was pushed down by the coworker and he fell to the ground injuring his right wrist. The coworker corroborated the claimant's testimony regarding the exchange of insulting words, and also testified that the claimant had played a harassing prank on him days prior to the _____, incident. The hearing officer determined that the claimant had been involved in horseplay and harassment of his coworker for a period of time, prior to the _____, incident. However, the hearing officer was persuaded by the claimant's testimony that on the date of the incident, _____, the claimant was not engaged in horseplay.

Section 406.031(a)(2) provides, in part, that "[a]n insurance carrier is liable for compensation for an employee's injury without regard to fault or negligence if the injury arises out of and in the course and scope of employment." Section 401.011(12) defines "course and scope of employment" to mean "an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer." The definition goes on to state that the term includes an activity conducted on the premises of the employer or at other locations but

does not include transportation or travel subject to certain exceptions. The claimant had the burden to prove by a preponderance of the evidence that an injury occurred in the course and scope of his employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. Whether an injury occurred in the course and scope of employment is generally a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 91036, decided November 15, 1991. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the 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). Our review of the record does not demonstrate that the hearing officer's determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's determinations that the claimant was not engaged in horseplay, as defined in Section 406.032(2), and that he was in the course and scope of his employment at the time he was injured on _____. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). We specifically note that the carrier did not pursue a personal animosity defense under Section 406.032(1)(C).

The hearing officer did not err in determining that the claimant had disability from _____, to October 24, 2001. Disability is defined as the inability to obtain and retain employment at wages equivalent to the preinjury wage due to a compensable injury. Section 401.011(16). The claimant testified that he was not able to work from _____, to October 24, 2001, because of the right wrist injury that occurred on _____. Disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Our review of the record does not demonstrate that the hearing officer's disability determination is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Pool, *supra;* Cain, *supra*.

The true corporate name of the insurance carrier is **EAGLE PACIFIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge