

APPEAL NO. 022250
FILED OCTOBER 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on August 12, 2002, the hearing officer determined that the appellant (claimant) was intoxicated at the time of his on-the-job accident of _____, and that he has not had disability. The claimant has appealed these determinations on evidentiary sufficiency grounds. The respondent (carrier) urges in response that the evidence is sufficient to support our affirmance.

DECISION

Affirmed.

The claimant, who was 38 years of age at the time, testified that on Tuesday, _____, he reported to the employer's yard at 7:00 a.m., checked the oil and drove the well servicing rig around the yard, and that as he was exiting the rig cab, his foot slipped on the cab step and he fell, twisting his shoulders and neck. He said he had immediate sharp pain between his shoulder blades and in his neck; that he rode to the site of the oil well to be serviced but could not complete the shift; that he went to a hospital emergency room (ER) where he was given a drug screen test, treated, and released; that when his drug test came back positive for marijuana metabolite, he was fired; that he has constant pain, bad headaches, and cannot lift; and that he has not looked for work because he can no longer perform manual labor. The medical records reflect that the claimant changed treating doctors and commenced chiropractic treatment on or about March 25, 2002, and that his chiropractor has kept him off work through the date of the hearing. The claimant further testified that he smoked one or two "joints" with friends on the Saturday before the accident; that the effects wore off within eight hours; and that he was feeling no effects from this drug when he reported for work on _____. He conceded that he has been a regular user of marijuana since age 18 and that he gave an incorrect answer to an interrogatory answer because he is on probation for a second alcohol-related DWI.

The claimant contends on appeal that his evidence, including the time lapse from the time he last used marijuana to the time of the accident, the lack of indication of any intoxication in the ER records, and the August 2002 statements from three coworkers as to the normalcy of his appearance on _____, constitute the great weight of the evidence to establish that he did indeed have the normal use of his mental and physical faculties at the time of the accident. See Section 401.013(2). The carrier relied on the August 7, 2002, report of Dr. H who opined that given the levels of marijuana metabolites found in the claimant's urine sample, the claimant was "reasonably within the spectrum of intoxication" and that the illegal substance consumed prior to the incident "could influence at the very least in part the patient's ability to work safely."

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a) and, as the trier of fact, 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)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual determinations 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 decision and order of the hearing officer are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge