

APPEAL NO. 022455
FILED NOVEMBER 6, 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 September 3, 2002. The hearing officer determined that the respondent's (claimant) claimed injury did not occur while he was in a state of intoxication, as defined in Section 401.013, from the introduction of a controlled substance, thereby relieving the appellant (carrier) of liability for compensation, and that the claimant has disability from the injury sustained on _____, from January 30, 2002, through the date of the hearing. The carrier appealed and argued that the decision was against the great weight of the credible evidence. There is no response from the claimant.

DECISION

Affirmed.

The success of the carrier's argument that it should be relieved of liability for the claimed injury is dependent upon the success of its argument that the claimant was intoxicated at the time of his injury. The claimant testified that he fell from a truck on _____. On the same day of his injury, the claimant tested positive for the presence of marijuana metabolites 90 ng/ml at (clinic). The claimant testified that immediately after taking the test at the clinic, he went and took his regularly scheduled weekly test for his probation officer. The claimant offered into evidence a statement from his probation officer, which states that the claimant's test of _____, was negative for any illegal substances. The claimant additionally introduced two witness statements, one from his supervisor and another from a coworker, who stated that the claimant did not appear to be under the influence of drugs or alcohol on the date in question.

Section 406.032(1)(A) provides that a carrier is not liable for compensation if the employee was in a state of intoxication at the time of the injury. For purposes of this case, intoxication is defined as not having the normal use of mental or physical faculties from the voluntary introduction of a controlled substance, marijuana, into the body. See Section 401.013(a)(2). An employee is presumed sober. Texas Workers' Compensation Commission Appeal No. 94247, decided April 12, 1994. A carrier rebuts the presumption by presenting probative evidence of intoxication. Texas Workers' Compensation Commission Appeal No. 91018, decided September 19, 1991. Once a carrier introduces evidence of intoxication, the burden shifts to the employee to prove that he was not intoxicated at the time of injury. The claimant introduced evidence that he was not intoxicated at the time of the accident. Whether a claimant is intoxicated at the time of an injury is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950266, decided March 31, 1995. The hearing officer was acting within his province as the fact finder in crediting the evidence from the claimant, the claimant's probation officer, and the claimant's

supervisor and coworker in determining that the claimant was not intoxicated at the time of his injury. Our review of the record does not demonstrate that the hearing officer's determination that the claimant was not intoxicated at the time of his injury is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier also asserts error in the hearing officer's determination that the claimant had disability from January 30, 2002, through the date of the hearing. This issue presented a question of fact for the hearing officer. Our review of the record does not reveal that the disability determination is so against the great weight of the evidence as to compel its reversal on appeal. Cain.

The hearing officer's decision and order are affirmed.

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

GARY SUDOL
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica Lopez
Appeals Judge