

APPEAL NO. 022710
FILED NOVEMBER 21, 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 30, 2002. With regard to the only issue before her, the hearing officer determined that the appellant (claimant's) injury occurred while he was in a state of intoxication as defined in Section 401.013 and, thereby, the respondent (carrier) was relieved of liability.

The claimant appealed, contending that a chain of custody form was not provided, that the quantitative amount of metabolite did not prove intoxication, and that he did in fact have the normal use of his mental and physical facilities. The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant was a serviceman at the employer's tire company. What occurred earlier on the morning of _____, is in dispute. It is undisputed that around noon on _____, the claimant was attempting to mount a 16 inch tire on a 16-1/2 inch wheel when the tire exploded, severely injuring the claimant. The claimant was taken to the hospital and a routine urine drug screen taken an hour and a half after the explosion was positive for opiates and marijuana metabolite (THC). A subsequent quantitative drug test showed a level of 201 nanograms per milliliter (ng/ml) of THC. A peer review doctor's report stated that the level of THC was "consistent with TWCC definition of intoxication, Section 401.013." The claimant sought to show that he was not intoxicated through his testimony and the testimony/statements of coworkers.

Section 406.032(1)(A) provides that an insurance carrier is not liable for compensation if the injury occurred while the employee was in a state of intoxication. The definition of intoxication in Section 401.013(a) includes the state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance. The law presumes that a claimant was sober at the time of an injury; however, the carrier can, with probative evidence of intoxication, rebut this presumption and shift the burden to the claimant to prove that he (or she) was not intoxicated. Texas Workers' Compensation Commission Appeal No. 91018, decided September 19, 1991; Texas Workers' Compensation Commission Appeal No. 94247, decided April 12, 1994. Regarding the quality of the carrier's evidence of intoxication to shift the burden of proof, in Texas Workers' Compensation Commission Appeal No. 92224, decided July 16, 1992, a marijuana intoxication case involving disparate results in blood and urine tests, the Appeals Panel stated as follows:

[W]e have never held nor implied that a carrier must present scientific evidence and/or expert testimony in order to raise the intoxication

exception. That does not detract from the matter that evidence offered to raise the issue of intoxication and erase the presumption of sobriety thereby shifting the burden back to claimant, must have some probative value and not be so weak as to be meaningless or amount to no more than a mere scintilla.

The Appeals Panel has often recognized that a positive urinalysis test result will generally suffice to shift the burden of proof to a claimant to establish that he or she was not intoxicated at the time of the injury. See Texas Workers' Compensation Commission Appeal No. 991476 decided August 24, 1999 (unpublished), and cases cited therein.

In this case, the positive drug screen taken within two hours of the accident, the quantitative testing establishing the 201 ng/ml metabolite level, and the doctor's opinion are sufficient to shift the burden to the claimant to prove that he was not intoxicated. The claimant attempted to do so through lay testimony which the hearing officer was free to accept or reject. The hearing officer could consider all the testimony and the reasonable inferences that the testimony raised including the fact that there was no formal chain of custody.

We have reviewed the complained-of determination and conclude that the issue involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We hold that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Margaret L. Turner
Appeals Judge