

APPEAL NO. 022748
FILED DECEMBER 10, 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 24, 2002. The hearing officer determined that (1) the appellant's (claimant) horseplay was a producing cause of the injury, thereby relieving the respondent (carrier) of liability for compensation; and (2) the claimant did not have disability because there was no compensable injury. The claimant appeals the determinations on sufficiency of the evidence grounds. The carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in reaching the complained-of determinations. Although not defined by the 1989 Act and Texas Workers' Compensation Commission rules, horseplay involves "rough and boisterous play," "pranks," "fooling," or "friendly attacks," which take the employee out of the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 982732, decided January 6, 1999, and cases cited therein. Whether the conduct in which a claimant was engaged at the time of the injury was horseplay is a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93013, decided February 16, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. Section 410.165(a). In view of the evidence presented, we cannot conclude that the hearing officer's determination is 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). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability. Section 401.011(16).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Veronica Lopez
Appeals Judge

Robert W. Potts
Appeals Judge