

APPEAL NO. 023069  
FILED JANUARY 15, 2003

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 October 31, 2002. The hearing officer determined that the appellant (claimant) sustained a compensable injury on \_\_\_\_\_, but did not have resulting disability. The claimant appeals the disability determination and contends that the hearing officer erred in considering evidence relating to the claimant's arrest on August 31, 2002, and his subsequent incarceration. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Disability is defined as the inability because of a compensable injury to obtain and retain employment at the preinjury wage. Section 401.011(16). Whether the claimant had disability resulting from the compensable injury was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer impliedly found that the claimant's inability to obtain or retain employment at his preinjury wage was due to something other than the compensable injury. Nothing in our review of the record indicates that the hearing officer's disability 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).

The hearing officer did not err in considering evidence relating to the claimant's arrest in August 2002, which was during the claimed disability period, and making a finding of fact reflecting the same. In Texas Workers' Compensation Commission Appeal No. 002599, decided December 13, 2000, we noted that disability is an economic concept and that if an injured employee is incarcerated, the actual loss of wages is attributable to such incarceration rather than the compensable injury. Texas Workers' Compensation Commission Appeal No. 92428, decided October 2, 1992; Texas Workers' Compensation Commission Appeal No. 92674, decided January 29, 1993. We perceive no error in the hearing officer's consideration and fact finding relating to the claimant's incarceration in August 2002. Furthermore, we note that it was the claimant who offered a certified copy of his record of arrests in (county) at the hearing.

The hearing officer's decision and order is 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.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge