APPEAL NO. 030095
FILED MARCH 3, 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 (CCH) was held on December 13, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, in the form of a lumbar sprain/strain; that he had disability from June 8 through December 9, 2002; and that the appellant (carrier) is not relieved of liability because the claimed injury did not occur while the claimant was in state of intoxication. The carrier appeals the hearing officer's determination that it is not relieved of liability because the claimed injury did not occur while the claimant was in a state of intoxication. The claimant's response requests that we affirm the hearing officer's decision. There is no appeal of the hearing officer's determinations that the claimant sustained a compensable injury on _____, in the form of a lumbar sprain/strain and that the claimant had disability from June 8 through December 9, 2002.

DECISION

Affirmed.

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 applicable to this case is 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. Section 401.013(a)(2). As explained in Texas Workers' Compensation Commission Appeal No. 021751, decided August 26, 2002, an employee is presumed sober. However, when the carrier rebuts the presumption of sobriety with probative evidence of intoxication, the employee has the burden of proving that he was not intoxicated at the time of the injury. Conflicting evidence was presented on the intoxication issue. After reading the report of the medical toxicologist at the CCH, the hearing officer shifted the burden of proof to the claimant to prove that he was not intoxicated. It is clear that in reaching his decision that the claimant was not intoxicated, the hearing officer relied on the manager's description of the dispatcher's scrutiny of employees before sending them off to a work assignment. 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. The hearing officer found that at the time of the claimant's injury, the claimant had the normal use of his mental and physical faculties and concluded that the carrier is not relieved of liability because the claimed injury did not occur while the claimant was in a state of intoxication. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.12d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

BEN SCHROEDER
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

_____
Robert W. Potts
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Daniel R. Barry
Appeals Judge