

APPEAL NO. 030118  
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 August 26, 2002. The hearing officer resolved the disputed issue by deciding that horseplay was not a producing cause of the respondent's (claimant) claimed injury of \_\_\_\_\_, and thus the appellant (carrier) is not relieved of liability for workers' compensation benefits. The carrier appealed and the claimant responded. In Texas Workers' Compensation Commission Appeal No. 022390, decided November 4, 2002, the Appeals Panel reversed the hearing officer's decision and remanded the case for the hearing officer to allow Ms. F to testify. Ms. F testified at the CCH on remand held on December 5, 2002. In her decision on remand, the hearing officer again determined that horseplay was not a producing cause of the claimant's claimed injury of \_\_\_\_\_, and thus the carrier is not relieved of liability for compensation. The carrier appeals the hearing officer's decision on remand, asserting that the hearing officer's decision on remand is against the great weight and preponderance of the evidence and that the hearing officer committed reversible error by not allowing Mr. S to testify. No response was received from the claimant.

DECISION

Affirmed.

Section 406.032(2) provides that an insurance carrier is not liable for compensation if the employee's horseplay was a producing cause of the injury. In the instant case, there was conflicting evidence as to whether the claimant was involved in horseplay at the time of her injury. 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 the claimant was in the course and scope of her employment when she tripped and fell and that the claimant was not engaged in horseplay at the time of the injury. The hearing officer concluded that horseplay was not a producing cause of the claimed injury and thus the carrier is not relieved of liability for workers' compensation benefits. Although there is conflicting evidence, we conclude that the hearing officer's decision is supported by the claimant's testimony, which the hearing officer apparently found was credible. 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.2d 175 (Tex. 1986).

We do not find that the hearing officer committed reversible error in denying the carrier's request to have Mr. S testify at the CCH on remand. At the original CCH, the carrier called Ms. F to testify, the claimant objected, and the hearing officer sustained the objection. The carrier did not then call Mr. S to testify. In Appeal No. 022390,

*supra*, the Appeals Panel determined that the hearing officer erred in not allowing Ms. F to testify and remanded the case to allow Ms. F to testify. Ms. F testified at the CCH on remand and the hearing officer noted in her decision on remand that she considered Ms. F's testimony. At the CCH on remand, the hearing officer denied the carrier's request to have Mr. S testify, noting that the remand was for the purpose of having Ms. F testify and that Mr. S had not been called as a witness at the original CCH. We note that at the CCH on remand, the hearing officer took official notice of the original CCH record, which included Mr. S's written statement and transcribed recorded statement. Under these circumstances, we cannot conclude that reversible error has been shown in the hearing officer's ruling excluding the testimony of Mr. S.

We affirm the hearing officer's decision and order on remand.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge