

APPEAL NO. 030165  
FILED MARCH 11, 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 December 10, 2002, with the record closing on December 20, 2002. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) claimed injury on \_\_\_\_\_, occurred while he was in a state of intoxication as defined by Section 409.013, from the introduction of a controlled substance, thereby relieving the respondent (carrier) of liability for compensation; that the claimant's injury sustained on \_\_\_\_\_, includes the low back; that because the claimant did not sustain a compensable injury, the claimant does not have disability; and that the carrier has not waived the right to dispute compensability of the claimed injury. The claimant appealed the hearing officer's determinations on the issues of carrier waiver, intoxication, and disability. The carrier responded, urging affirmance.

DECISION

Affirmed.

**CARRIER WAIVER**

With regard to the carrier waiver issue, the Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) reflects that the carrier first received written notice of the claimant's claimed injury on \_\_\_\_\_ (the date of the injury). The carrier submitted a TWCC-21 to the Texas Workers' Compensation Commission (Commission) on July 18, 2002, which was within seven days of the carrier's first written notice of injury, and in the TWCC-21 the carrier agreed to initiate payment of benefits as they accrued. On July 24, 2002, which was within 60 days of the carrier's first written notice of the injury, the carrier filed with the Commission a TWCC-21 contesting compensability of the claimant's claimed injury based on an intoxication defense. On August 1, 2002, the carrier refiled its TWCC-21 contesting compensability of the claimant's claimed injury based on an intoxication defense because it was informed that the TWCC-21 filed on July 24, 2002, was illegible (the TWCC-21 filed on July 24 was not illegible). The hearing officer concluded that the carrier did not waive its right to contest the compensability of the claimed injury under Section 409.021. The hearing officer's determination that the carrier did not waive its right to contest the compensability of the claimed injury under the facts of this case is in accord with our decision in Texas Workers' Compensation Commission Appeal No. 022375-s, decided October 31, 2002. The hearing officer's determination on the carrier waiver issue is supported by sufficient evidence and 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).

## INTOXICATION

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) that applies 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. 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 was not intoxicated at the time of the injury. Texas Workers' Compensation Commission Appeal No. 94247, decided April 12, 1994. The hearing officer's decision that the claimant was intoxicated when the injury occurred is supported by the drug test, which was positive for cocaine, and by the confirmatory test results, as well as by the report and opinion of a medical toxicologist. We note that in reaching his opinion, the medical toxicologist did take into consideration the medications the claimant was prescribed by his dentist and he ruled out those medications as a source of the positive confirmatory test for cocaine metabolite. We conclude that the hearing officer's determination that the claimant was intoxicated when the injury occurred is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

## DISABILITY

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable injury, unless the carrier is relieved of liability pursuant to Section 406.032(1)(A), the intoxication defense. Since the hearing officer determined that the claimed injury occurred while the claimant was in a state of intoxication, the claimant did not have a compensable injury. The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability.

The hearing officer's decision and order are affirmed.

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.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge