APPEAL NO. 030311
FILED MARCH 17, 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 January 9, 2003. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) horseplay was a producing cause of the claimed injury thereby relieving the respondent (self-insured) of liability for compensation; that the claimant did not sustain a compensable injury; and that the claimant did not have disability. In his appeal, the claimant essentially argues that the hearing officer's determinations are against the great weight of the evidence. In its response to the claimant's appeal, the self-insured 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 and decides what facts the evidence has established. Section 410.165(a). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant and in finding that he was engaged in horseplay at the time of the claimed back injury. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the horseplay determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Based upon her resolution of the horseplay issue, the hearing officer properly determined that the claimant did not sustain a compensable injury in that the claimant's horseplay relieved the carrier of liability for the injury pursuant to Section 406.032(2).

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, he likewise could not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

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

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Elaine M. Chaney
Appeals Judge

CONCUR:

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Judy L. S. Barnes
Appeals Judge

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Michael B. McShane
Appeals Panel
Manager/Judge