

APPEAL NO. 030401
FILED APRIL 7, 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 22, 2003. The hearing officer resolved the disputed issues by deciding that the decedent was injured in the course and scope of his employment when he was involved in a motor vehicle accident (MVA) on _____, resulting in his death; and that the claimed injury did not occur while the decedent was in a state of intoxication, as defined by Section 401.013, from the introduction of a controlled substance, and thus the appellant (carrier) is not relieved of liability for compensation. The carrier appealed the hearing officer's determinations and the respondents (claimants) responded.

DECISION

Affirmed as reformed herein.

We reform Conclusions of Law Nos. 3 and 4 and the Decision section of the hearing officer's Decision and Order to substitute "decedent" for "claimant" when referring to the deceased employee.

Conflicting evidence was presented on the disputed issues. While the carrier argued that the claimant had deviated from his work activities at the time of the MVA, there was evidence that it was not unusual for delivery drivers such as the decedent to take the route he took in returning to the employer's place of business after making his last pick up for the day. 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 determined that the decedent was in the course and scope of his employment at the time of his MVA. We conclude that the hearing officer's determination on the disputed issue of course and scope of employment 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).

Conflicting evidence was also presented on the intoxication issue. We do not find that the carrier has shown reversible error in the hearing officer's ruling allowing the toxicologist to testify over the carrier's objection regarding his qualifications. The hearing officer heard the testimony regarding the toxicologist's qualifications and we cannot say that the hearing officer abused her discretion in permitting him to testify and give his opinion. In addition, the toxicologist's report was admitted into evidence without objection and so his opinion, which is contained in that report, was already in evidence before any objection was made regarding his testimony. Furthermore, there is in evidence a report from a medical doctor that provides support for the hearing officer's determination on the intoxication issue independent of the toxicologist's opinion. The lag time between the time of the MVA and the time the blood and urine specimens were

taken was for the hearing officer to consider in making her determination. Texas Workers' Compensation Commission Appeal No. 030090, decided March 5, 2003. Although there is conflicting evidence on the intoxication issue, we conclude that the hearing officer's determination that the decedent was not intoxicated at the time of his injury 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*.

As reformed herein, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **EMPLOYERS INSURANCE OF WAUSAU, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

**RICK KNIGHT
105 DECKER COURT, SUITE 600
IRVING, TEXAS 75062.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge