

APPEAL NO. 030671
FILED MAY 6, 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 February 18, 2003. The hearing officer determined that the respondent (claimant herein) sustained a compensable injury on _____; that the injury did not occur while the claimant was in a state of intoxication; and that the claimant had disability from February 11, 2002, continuing through the date of the CCH. The appellant (carrier herein) files a request for review arguing that these determinations are contrary to the evidence. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

INJURY AND DISABILITY

Whether the claimant sustained a compensable injury and had disability were factual questions for the hearing officer to resolve. Injury and disability determinations can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mutual Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). 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 from the evidence presented. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

INTOXICATION

Section 406.032 provides, in pertinent part, that an insurance carrier is not liable for compensation if the injury occurred while the employee was in a state of intoxication. The Appeals Panel has noted that courts have held that a claimant need not prove he was not intoxicated as there is a presumption of sobriety, but that when a carrier presents evidence of intoxication, raising a question of fact, the claimant then has the burden to prove that he was not intoxicated at the time of injury. Texas Workers' Compensation Commission Appeal No. 951373, decided September 28, 1995. In the present case, the carrier argues that by producing a positive drug screen test, the burden shifted to the claimant to prove that he was not intoxicated. The hearing officer did not agree and found that the burden was not shifted by the drug test that was performed 11 days after the date of the claimant's injury and that the claimant was not intoxicated at the time of the injury. The carrier argues that drug testing was delayed by

the claimant's delay in reporting the injury. Even so, we find no error in the hearing officer's declining to shift the burden of proof in light of the evidence in this case.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge