

APPEAL NO. 030770
FILED MAY 9, 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 February 12, 2003. The hearing officer determined that the appellant (claimant) was in a state of intoxication from the introduction of a controlled substance at the time of the claimed injury and, therefore, the injury is not compensable and the claimant did not have disability. The claimant appeals these determinations. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

A claimant has the burden of establishing that a compensable injury was sustained. An insurance carrier is not liable for compensation if an injury occurred while the employee was in a state of intoxication. Section 406.032(1)(A). Section 401.013(b)(2)(B), applicable in this case, defines intoxication as not having normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance or controlled substance analogue, as defined by Section 481.002, Health and Safety Code. 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 he was not intoxicated at the time of injury. Texas Workers' Compensation Commission Appeal No. 951373, decided September 28, 1995. While a positive drug test, such as in this case, can shift the burden of proof to the claimant, it does not, in and of itself, compel a finding of intoxication at the time of injury. Texas Workers' Compensation Commission Appeal No. 941099, decided September 30, 1994. See also Texas Workers' Compensation Commission Appeal No. 92173, decided June 15, 1992. Compare Texas Workers' Compensation Commission Appeal No. 950656, decided June 9, 1995. Texas Workers' Compensation Commission Appeal No. 950266, decided March 31, 1995, citing prior Appeals Panel decisions, stated that lay evidence as to the claimant's faculties while at work was admissible.

In the present case, the hearing officer found that there was sufficient evidence to shift the burden of proof of sobriety to the claimant and that the claimant was intoxicated at the time of the injury. In addition to the positive drug test, the carrier also presented the opinion of a toxicologist. The claimant argues on appeal that the hearing officer misapplied the proper legal standard. Specifically, the claimant argues that the hearing officer was required to determine "whether the [c]laimant had normal use of his mental and physical faculties at the time of his injury." We disagree. As intoxication is defined as not having normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance or controlled substance analogue, as defined by Section 481.002, Health and Safety Code, the hearing officer's

determination that the claimant was intoxicated as defined by Section 401.013 from the introduction of a controlled substance at the time of the injury is sufficient to encompass the definition of intoxication as well. We perceive no reversible error in the hearing officer not making a specific finding that the claimant did not have normal use of his mental and physical faculties at the time of the injury.

Whether the claimant was intoxicated at the time of the injury and whether he had disability were factual questions for the hearing officer to resolve. The claimant asserts that issues relating to the chain of custody, as well as the fact that the carrier's expert testified from a report not previously provided to the claimant, raised questions as to the credibility of the carrier's evidence. 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).

The hearing officer's decision and order is affirmed.

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

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Chris Cowan
Appeals Judge

CONCUR:

Veronica Lopez
Appeals Judge

Robert W. Potts
Appeals Judge