APPEAL NO. 031037
FILED JUNE 10, 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 April 1, 2003. The hearing officer determined that the respondent (claimant) was not in a state of intoxication at the time of the claimed injury on _____, and that as a result of the injury, the claimant had disability from April 17, 2002, through the date of the hearing. The appellant (carrier) appeals this decision. The claimant 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 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 noted that the urine sample in question was documented as having been collected eight days prior to the date of injury; however, the hearing officer determined that there was sufficient evidence to shift the burden of proof of sobriety to the claimant. The hearing officer was persuaded by the claimant's testimony and the documentary evidence that the claimant "was in full possession of his physical and mental faculties at the time of the injury". Contrary to the carrier's argument, we are unaware of any authority requiring the claimant to establish that he was not intoxicated through medical evidence. 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 hearing officer is the sole judge of the weight and

credibility of the evidence. Section 410.165(a). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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 **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge