

APPEAL NO. 031230
FILED JUNE 16, 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 30, 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(a)(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. While a claimant initially need not prove he was not intoxicated as there is a presumption of sobriety, 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.

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). 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 decision and order of the hearing officer is affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge