

APPEAL NO. 031479
FILED JULY 22, 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 21, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was in a state of intoxication as defined by Section 401.013 from the introduction of a controlled substance, thereby relieving the respondent (carrier) of liability for compensation; that the claimant did not sustain a compensable injury; and that the claimant has not had disability. The claimant appealed, and the carrier responded.

DECISION

Affirmed.

Section 406.032(1)(A) provides that an insurance carrier is not liable for compensation if the injury occurred while the employee was in a state of intoxication. The definition of intoxication applicable to this case is the state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance. Section 401.013(a)(2). As explained in Texas Workers' Compensation Commission Appeal No. 021751, decided August 26, 2002, an employee is presumed sober; however, when the carrier rebuts the presumption of sobriety with probative evidence of intoxication, the employee has the burden of proving that he was not intoxicated at the time of the injury.

A urine specimen was collected from the claimant approximately two hours after his accident at work, and it is undisputed that the claimant's positive drug screen with confirmatory testing for cocaine metabolite of 43,920 ng/ml shifted the burden of proof to the claimant. Conflicting evidence was presented on the intoxication issue. The hearing officer found that at the time of the injury, the claimant did not have the normal use of his mental and physical faculties. It is clear from the hearing officer's decision that the claimant's state of not having the normal use of his mental or physical faculties at the time of his injury was the result of the voluntary introduction of a controlled substance into his body. 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. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision on the intoxication issue is supported by sufficient evidence and that it 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). Since the hearing officer determined the intoxication issue against the claimant, the claimant did not have a compensable injury as defined by Section 401.011(10), and since Section 401.011(16) requires the existence of a compensable injury as a prerequisite to a finding of disability, the hearing officer properly concluded that the claimant did not have disability.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge