APPEAL NO. 031513
FILED JULY 31, 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 May 6, 2003. The hearing officer determined that the appellant (claimant) was intoxicated at the time of his on-the-job injury of _____, and that the claimant has sustained no disability. The claimant appeals, contending that the evidence is contrary to the decision of the hearing officer. The respondent (self-insured) did not respond.

DECISION

Affirmed.

INTOXICATION

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 in Section 401.013(a) that applies 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. The law presumes that a claimant was sober at the time of an injury; however, the carrier can, with probative evidence of intoxication, rebut this presumption and shift the burden to the claimant to prove that he was not intoxicated at the time of the injury. Texas Workers' Compensation Commission Appeal No. 94247, decided April 12, 1994. The hearing officer's decision that the claimant was intoxicated when the injury occurred is supported by the drug test, which was positive for the marijuana metabolite, and by the confirmatory test results, as well as by the report and opinion of a forensic toxicologist. The claimant admitted to marijuana use three weeks before the date of injury. The hearing officer did not find the claimant's testimony that he stopped using marijuana three weeks before the accident to be persuasive. This determination involved questions of fact 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)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We conclude that the hearing officer's determination that the claimant was intoxicated when the injury occurred is supported by sufficient evidence and 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.12d 175 (Tex. 1986).

DISABILITY

Since the hearing officer found that the claimant was intoxicated when the injury occurred, the self-insured is relieved of liability for compensation. Without a compensable injury, there can be no disability. Disability means the "inability because

of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id*

The decision and order of the hearing officer are affirmed.

The true corporate name of the self-insured is **(a certified self-insured)** 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.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Veronica Lopez-Ruberto
Appeals Judge

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Robert W. Potts
Appeals Judge