

APPEAL NO. 031520
FILED AUGUST 1, 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 (CCH) was held on April 10, 2003, with the record closing on May 6, 2003. With regard to the only issue before her, the hearing officer determined that the claimed injury did not occur while respondent 2 (claimant) was in a state of intoxication as defined in Section 401.013, and therefore the appellant (carrier) is not relieved of liability for compensation.

The carrier appeals, contending that it had not received a reset notice, that it was not given an opportunity to present evidence at the CCH, and that there was no basis for the hearing officer to find that the claimant was not in a state of intoxication at the time of the alleged injury. The appeals file does not contain a response from either the claimant or respondent 1 (subclaimant).

DECISION

Affirmed.

As the hearing officer notes in her Statement of the Evidence, a CCH was convened on April 10, 2003, to hear the case. The claimant was not present but the subclaimant was present, as was the carrier. The hearing officer announced that the claimant would be sent a 10-day show cause letter and if the claimant did not respond the hearing officer would close the record and would not reconvene the hearing. The carrier and the subclaimant were offered an opportunity to make opening statements, which they declined to do and, contrary to the carrier's representation in its appeal, were given the opportunity to present both documentary evidence (Audiotape, counter 57) and/or testimonial evidence. In response to whether the carrier wished to present documentary evidence, the carrier's representative answered "no, your honor." The subclaimant offered a medical report, which was admitted without objection as Subclaimant's Exhibit No. 1 (Audiotape, counter 53). Neither the subclaimant nor the carrier offered any testimonial evidence.

Regarding the carrier's contention that there is no basis for the hearing officer's decision that the claimant was not intoxicated at the time of the alleged injury, the law presumes that the employee is sober at the time of an injury. Texas Workers' Compensation Commission Appeal No. 030792, decided May 16, 2003. The carrier then has the burden to rebut the presumption of sobriety by probative evidence of intoxication. In this case the carrier presented no evidence, although given an opportunity to do so, and therefore the presumption of sobriety was un rebutted. The hearing officer did not err in her determination on this point.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRANSPORTATION INSURANCE 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge