APPEAL NO. 031636
FILED AUGUST 11, 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 May 29, 2003. The hearing officer determined that the respondent (claimant) had disability from _____, through the date of the CCH and that the claimant "was not intoxicated within the meaning of [the 1989] Act." The appellant (carrier) appeals the adverse determinations, contending that "the claimant received his salary (wages) through June 28, 2002" and that the claimant failed to prove that "he was not intoxicated as defined in § 401.032(1)(A)." The file does not contain a response from the claimant.

DECISION

Affirmed.

Regarding the disability issue, the parties stipulated that the claimant sustained "an injury" (claimant testified to injuries to multiple body parts) in the course and scope of employment on _____, in a motor vehicle accident. The claimant testified that he was taken by ambulance to an emergency room (ER) and subsequently, began treating with Dr. A. There are no medical reports in evidence, other than off work slips dated January 6, 2003, and March 17, 2003, from Dr. A. At the CCH, there was discussion about a document indentified as a "Release Agreement" and admitted by the hearing officer. Because there was only one copy, the hearing officer instructed the carrier to make copies of the document for the claimant and the record. Our appeal file does not contain a copy of this document. However, the hearing officer was clear, on the record, that he considered this "Release Agreement" to be a settlement between the claimant and the employer on a wrongful employment termination claim and thus, it does not constitute salary or wages as the carrier claims. Although there is little medical evidence, the hearing officer could, and obviously did find disability based on the claimant's testimony alone. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). The hearing officer's determination on disability is supported by sufficient evidence.

After the claimant was taken to the ER on _____, a drug screen was performed, which indicated a positive marijuana metabolite at "96 ng/ml." The claimant disputes the chain of custody and that that report was his drug screen. The claimant testified that when the results of the drug screen became known, he took another drug screen required by his parole officer which was negative. There was no testimony or reports on the meaning of the drug screen.

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) includes 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. Texas Workers' Compensation Commission Appeal No. 91018, decided September 19,1991; Texas Workers' Compensation Commission Appeal No. 94247, decided April 12, 1994. The hearing officer did not make a specific finding whether he believed that the positive drug screen shifted the burden to the claimant, however, presuming that to be the case, the hearing officer found that the claimant "had the normal use of his mental and physical faculties and the Claimant's mental and physical faculties were not impaired by the voluntary ingestion of a controlled substance." The hearing officer commented that there was no evidence that 96 ng/ml of a marijuana metabolite is an intoxicant or indicates a specific time or dosage regarding its use. The hearing officer also commented regarding the claimant's testimony that the claimant had talked with a number of people, including the police officer at the scene, and none had questioned that the claimant had the normal use of his mental and physical faculties.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not 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).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY 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:

_____
Elaine M. Chaney
Appeals Judge

_____
Michael B. McShane
Appeals Panel
Manager/Judge