

APPEAL NO. 032618
FILED NOVEMBER 19, 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 August 28, 2003. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) claimed injury occurred while he was in a state of intoxication, as defined by Section 401.013, from the voluntary introduction into the body of a controlled substance, thereby relieving the respondent (carrier) of liability for compensation, and that the claimant did not have disability. The claimant appeals, contending that the hearing officer erred in making the adverse determinations. The carrier asserts that sufficient evidence supports the hearing officer's decision.

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. The claimant gave a urine specimen for testing a few hours after the claimed injury. The hearing officer's finding that the claimed injury occurred while the claimant was in a state of intoxication, as defined by Section 401.013, is supported by the drug test results, the confirmatory drug test results (cocaine metabolite at the level of 26,724 ng/ml), and the opinion of a medical toxicologist. We conclude that the hearing officer's determination 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 **COMMERCIAL CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge