

APPEAL NO. 033251
FILED JANUARY 28, 2004

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 November 18, 2003. The hearing officer resolved the disputed issue by deciding that the claimed injury did not occur while the respondent (claimant) was in a state of intoxication, as defined in Section 401.013, from the voluntary introduction of a controlled substance, thereby relieving the appellant (carrier) of liability for compensation. The carrier appealed, arguing that the determination of the hearing officer is against the great weight and preponderance of the evidence. The claimant responded, urging affirmance.

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. There was conflicting evidence as to how the claimant was transported to the hospital but it was undisputed that the claimant went to the hospital after the accident. A urine sample was collected at the emergency room after the injury. The drug screen was positive for cocaine metabolite at a level of 1,508 ng/ml. Dr. C, a physician who conducted a records review for the carrier, opined that the level in the claimant's urine is compatible with a dose of cocaine taken shortly before the accident occurred and that "when all things are taken into consideration, in all medical probability, [the claimant] was under the influence of cocaine at the time of his accident and the cocaine adversely affected his abilities." The claimant sought to show that he had the normal use of his mental and physical faculties at the time of the injury through his testimony and the statement of a coworker.

In this instance, the positive drug screen taken in the hospital after the accident, the quantitative testing establishing the 1,508 ng/ml metabolite level, and the opinion from Dr. C are sufficient to shift the burden to the claimant to prove that he was not intoxicated. Thus, the hearing officer did not err in shifting the burden to the claimant to show that he had the normal use of his mental and physical faculties at the time of his injury. The claimant attempted to do so through his own testimony and his coworker's statement, which the hearing officer was free to accept or reject. Nothing in our review of the record reveals that the hearing officer's determination that the claimant had the

normal use of his mental and physical faculties at the time of his injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's intoxication determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Although another fact finder may have drawn different inferences from the evidence, which would have supported a different result, that fact does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge