APPEAL NO. 033357
FILED FEBRUARY 20, 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 13, 2003. The hearing officer determined that the respondent (claimant) was not intoxicated at the time of the work-related injury on _____; that the injury is compensable; and that the claimant had disability from _____, through June 5, 2003. The appellant (carrier) appeals these determinations. The appeal file contains no response from the claimant.

DECISION

Affirmed.

The claimant had the burden of establishing that a compensable injury was sustained. An insurance carrier is not liable for compensation if an injury occurred while the employee was in a state of intoxication. Section 406.032. Section 401.013(a)(2)(C), applicable in this case, defines intoxication as "not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of a dangerous drug, as defined by Section 483.001, Health and Safety Code." The Appeals Panel has noted that courts have held that a claimant need not prove he was not intoxicated as there is a presumption of sobriety, but that when a carrier presents evidence of intoxication, the claimant then has the burden to prove that he was not intoxicated at the time of injury. Texas Workers' Compensation Commission Appeal No. 951373, decided September 28, 1995. We have observed that while a positive drug test, such as in this case, can shift the burden of proof to the claimant, it does not, in and of itself, compel a finding of intoxication at the time of injury. Texas Workers' Compensation Commission Appeal No. 941099, decided September 30, 1994. Section 401.013 does not define intoxication from marijuana use in terms of a specific amount found in a drug test, contrary to the definition of alcohol intoxication, which does set a specific amount. The standard for intoxication from the use of marijuana is tied to whether a claimant had the normal use of his faculties. Texas Workers' Compensation Commission Appeal No. 950266, decided March 31, 1995, citing prior Appeals Panel decisions, stated that lay evidence as to the claimant's faculties while at work was admissible.

Whether the claimant had the normal use of his mental or physical faculties at the time of the accident, thereby making the work-related injury compensable, and whether he had disability were factual questions 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 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)). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the

claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision is 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).

The hearing officer's decision and order are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Edward Vilano
Appeals Judge