APPEAL NO. 040454
FILED APRIL 15, 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 February 5, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was not injured in the course and scope of his employment on _____; that the respondent (carrier) is relieved of liability because the claimant's horseplay was a producing cause of the claimant's right hip injury; that the claimant has not had disability because he did not sustain a compensable injury; and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy. The claimant appeals the hearing officer's determinations on the issues of compensable injury, horseplay, and disability, and asserts that the hearing officer erred in not addressing whether the carrier complied with Sections 409.005 and 409.021. The carrier asserts that sufficient evidence supports the hearing officer's determinations on the appealed issues and that there were no issues regarding compliance with Sections 409.005 and 409.021. There is no appeal of the hearing officer's determination in favor of the claimant on the issue of election of remedies.

DECISION

Affirmed.

Whether the claimant sustained a compensable injury and whether the claimant's horseplay was a producing cause of the injury thereby relieving the carrier of liability under Section 406.032(b) presented questions of fact for the hearing officer to determine from the evidence presented. Although the evidence was in conflict, there was evidence that the claimant was injured while kicking a ball around with other employees in an area of the employer's carpenter shop and that the employer had no knowledge that the employees were engaged in that activity. The fact that the hearing officer determined that the injury occurred on a break would not, in our opinion, preclude a determination that the claimant was engaged in horseplay given the evidence that the ball was being kicked around in the carpenter shop without the knowledge or permission of the employer. *Compare*, Texas Workers' Compensation Insurance Fund v. Rodriguez, 953 S.W.2d 765 (Tex. App.-Corpus Christi 1997, pet. denied), wherein it was determined that an employee sustained an injury in the course and scope of his employment when he was injured attempting to catch a football outside during a break and such outside football activity during breaks was with the knowledge and permission of the employer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision that the claimant did not sustain a compensable injury and that the claimant's horseplay was a producing cause of his injury are supported by sufficient evidence and are 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). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer did not err in not addressing whether the carrier complied with Sections 409.005 and 409.021 because there were no disputed issues pertaining to those sections. *See* Section 410.151(b).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY OF AMERICA** 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.

_____
Robert W. Potts
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Edward Vilano
Appeals Judge