APPEAL NO. 040715
FILED MAY 7, 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 February 10, 2004. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable right ankle injury on _____, because his horseplay was a producing cause of that injury and that the claimant did not have disability because he did not sustain a compensable injury. In his appeal, the claimant essentially argues that the hearing officer's determination that his horseplay was a producing cause of the injury is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's horseplay was a producing cause of his injury. That issue presented a question of fact 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). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the issue of whether the claimant was a willing participant in the horseplay. It was a matter for the hearing officer, as the fact finder, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. He did so by determining that the claimant willingly participated in the horseplay that ultimately led to the fall in which he fractured his right ankle. Nothing in our review of the record reveals that the hearing officer's horseplay determination 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 that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We find no merit in the claimant's assertion that even if he engaged in poking his coworkers with a pencil, it "was not a contributory or exciting event to that of having a coworker tackle him. Having a coworker tackle him and break his ankle simply did not naturally and sequentially flow from the act of poking another with a pencil . . .." In this instance, the hearing officer obviously believed that the claimant and a coworker were engaged in horseplay and that during that horseplay the claimant and the coworker fell to the ground, causing the claimant to fracture his ankle. He did not believe the claimant's assertion that the coworker tackled him and, as the fact finder, he was free to do so. Thus, we perceive no error in the hearing officer's determination that the carrier is relieved of liability pursuant to Section 406.032(2).

The success of the claimant's argument that he had a compensable injury and that he had disability is dependent upon the success of his argument that the hearing officer erred in making the horseplay determination. Given our affirmance of the determination that the claimant's horseplay was a producing cause of his _____, injury, we likewise affirm the determination that he did not sustain a compensable injury and did not have disability.

The hearing officer's decision and order are affirmed.

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

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Margaret L. Turner
Appeals Judge