APPEAL NO. 041387
FILED JULY 14, 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 May 13, 2004. The hearing officer determined that the appellant (claimant) was intoxicated at the time of his injury and therefore the respondent (carrier) is relieved of liability pursuant to Section 406.032(1)(A); and that the claimant did not have disability.

The claimant appealed, contending that he had not ingested any intoxicating substance on the day of the accident; that he was not intoxicated at that time; and that he did have disability. The carrier responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained an injury on _____, when he fell from a scaffold. The claimant was taken to a clinic shortly thereafter and a drug screen was positive for marijuana (THC) metabolite at 511 ng/ml.

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 drug screen showing a positive 511 ng/ml THC level was sufficient probative evidence of intoxication to shift the burden of proof to the claimant to prove that he was not intoxicated. The claimant attempted to do so by his testimony that he was not intoxicated and had not used marijuana in the last 30 days.

The hearing officer clearly was not persuaded by the claimant's testimony. It is the hearing officer, as the finder of fact, who 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. We conclude that the hearing officer's decision 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, 176 (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.

Accordingly, the hearing officer's decision and order are affirmed.

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

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals judge

_____
Elaine Chaney
Appeals Judge