

APPEAL NO. 042272
FILED OCTOBER 29, 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 (CCH) was held on August 24, 2004. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) did not sustain a compensable injury on _____; that because the claimant did not sustain a compensable injury, the claimant has not had disability; and that the claimant's horseplay was a producing cause of the claimed injury, thereby relieving the respondent/cross-appellant (carrier) of liability for compensation. The claimant appeals the hearing officer's decision, contending that the hearing officer did not consider a witness statement. The carrier appeals the hearing officer's finding, as corrected in an Order to Correct Clerical Error, that due to the claimant's claimed injury, the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage from February 12, 2004, through the date of the CCH. The carrier filed a response to the claimant's appeal. No response was received from the claimant.

DECISION

Affirmed.

Conflicting evidence was presented on the disputed issues. The hearing officer's decision reflects that he considered all of the evidence admitted at the CCH, which included the testimony and written statements of the witness the claimant mentions in her appeal. 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. The claimant claimed a work-related left knee injury. The hearing officer found that the claimant was not injured in the course and scope of her employment and that she was engaged in horseplay at the time of the incident in question. Although the evidence supports the hearing officer's finding of fact that the claimant was unable to obtain and retain employment at her preinjury wage for the period of time found by the hearing officer, the hearing officer did not err in determining that the claimant has not had disability because without a compensable injury, the claimant would not have disability as defined by Section 401.011(16). We conclude that the hearing officer's determinations are supported by sufficient evidence and that they 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).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ST. PAUL FIRE AND MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge