

APPEAL NO. 142375
FILED DECEMBER 30, 2014

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 October 2, 2014, in Fort Worth, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the claimed injury occurred while the appellant (claimant) was in a state of intoxication, as defined in Section 401.013, thereby relieving the respondent (carrier) of liability for compensation; and (2) the claimant did not have disability.

The claimant appealed the hearing officer's determinations, contending that he rebutted the presumption of intoxication through his testimony and reports of two medical experts. The appeal file does not contain a response from the carrier to the claimant's appeal.

DECISION

Affirmed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

The parties stipulated that the claimant sustained an injury at work on [Date of injury]. The claimant testified that he was injured when a tire weighing approximately 1000 pounds fell on him and broke his right tibia and fibula.

It was undisputed that a blood test was administered to the claimant on the date of injury. A toxicology report in evidence reflects that the blood test revealed an alcohol concentration greater than the legal limit of 0.08. The claimant contended at the CCH and on appeal that there was a breach in the standard operating procedure regarding the chain of custody of his blood specimen, and that the specimen that tested above the legal limit of 0.08 was in fact not his specimen. It is clear from the Discussion portion of the hearing officer's decision that, based on a report in evidence from Dr. Rosen (Dr. R)

discussing emergency room protocols used to draw blood, the hearing officer discounted the claimant's argument regarding his specimen.

DISABILITY

The hearing officer's determination that the claimant did not have disability is supported by sufficient evidence and is affirmed.

INTOXICATION

The hearing officer stated in the Discussion portion of the decision the following standard of law:

Regarding intoxication cases, [Section] 401.013(a)(1) defines intoxication as having an alcohol concentration to qualify as intoxicated under Section 49.01(2), of the Texas Penal Code. The Appeals Panel has held that an employee is presumed sober at the time of an injury. . . . However, a [c]arrier rebuts the presumption of sobriety if it presents 'probative evidence' of intoxication. . . . Once the carrier has rebutted the presumption, the employee has the burden of proving that he or she was not intoxicated at the time of the injury.

The hearing officer then analyzed the evidence presented by the claimant and the carrier to determine whether or not the claimant rebutted the presumption of intoxication, and ultimately explained that based on the evidence presented, the claimant was intoxicated at the time of the claimed injury, as defined in Section 401.013, and the carrier is relieved of liability for compensation.

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.

Section 401.013 provides the following:

(a) In this subtitle, "intoxication" means the state of:

- (1) having an alcohol concentration to qualify as intoxicated under Section 49.01(2), Penal Code [currently 0.08 or more]; **or** (emphasis added)
- (2) not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of:
 - (A) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

The Appeals Panel has held that for the purpose of the 1989 Act, an alcohol concentration meeting the stated limit contained in Penal Code Section 49.01(2) (currently 0.08 or more) is by definition intoxication, not merely a presumption, and there need be no further analysis of whether the claimant had the "normal use" of his faculties. See Appeals Panel Decision (APD) 91012, decided September 11, 1991; APD 972159, decided November 25, 1997; and APD 042113, decided October 11, 2004.

As noted above, it was undisputed that a blood test was administered to the claimant on the date of injury. The hearing officer was persuaded by the evidence presented that the toxicology report reflected that the claimant's alcohol concentration was greater than the legal limit of 0.08, and found that when the claimant was injured at work on [Date of injury], the claimant had an alcohol concentration to qualify as intoxicated under Section 49.01(2) of the Texas Penal Code. This finding is supported by sufficient evidence.

As explained above, an alcohol concentration of 0.08 or more is intoxication for purposes of the 1989 Act as a matter of law, and therefore no analysis should be made as to whether the claimant had the "normal use" of his faculties. A written decision is issued in this case to clarify the correct legal standard regarding intoxication due to the state of having an alcohol concentration to qualify as intoxicated under Section 49.01(2), Penal Code.

Because the hearing officer's finding that when the claimant was injured at work on [Date of injury], he had an alcohol concentration to qualify as intoxicated under Section 49.01(2) of the Texas Penal Code is supported by sufficient evidence, we affirm the hearing officer's determination that the claimed injury occurred while the claimant was in a state of intoxication, as defined in Section 401.013, thereby relieving the carrier of liability for compensation.

The true corporate name of the insurance carrier is **COMMERCE & INDUSTRY INSURANCE** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge