APPEAL NO. 022324
FILED OCTOBER 15, 2002

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 26, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant's horseplay was a producing cause of the claimant's injury, thereby relieving the carrier of liability for compensation; and that because the claimant did not sustain a compensable injury, the claimant does not have disability. The claimant appealed, arguing that the determinations of the hearing officer are against the great weight and preponderance of the evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

A carrier has the burden of proving exceptions to compensability of work-related injuries that are set out in Section 406.032. Section 406.032(2) provides that the carrier is not liable if "the employee's horseplay was a producing cause of the injury." The theory behind the horseplay exception to liability under the 1989 Act and its predecessor statute is that if an employee willingly engages in an act of horseplay which results in injury to the employee, then the horseplay is a deviation from the employee's course of employment. *See* Calhoun v. Hill, 607 S.W.2d 951 (Tex. Civ. App.-Eastland 1980, no writ), and cases cited therein. The hearing officer in this case was persuaded that the evidence supported that the claimant was injured while dancing and playing and not while she was in the course and scope of her employment. The claimant acknowledged at the CCH that this finding would be based on a determination of credibility.

The claimant did not sustain a compensable injury, and, without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm the decision and order.

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

CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge