

APPEAL NO. 042113
FILED OCTOBER 11, 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 August 12, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that because the claimant did not sustain a compensable injury, he did not have disability; and that the claimed injury occurred while the claimant was in a state of intoxication, thereby relieving the respondent (carrier) for compensation. The claimant appealed on sufficiency of the evidence grounds. The carrier responded, urging affirmance.

DECISION

Affirmed.

INJURY AND DISABILITY

We have reviewed the complained-of injury and disability determinations and conclude that those determinations involved questions of fact. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In the instant case, the hearing officer commented that while the claimant was out of town for an employer sponsored management training seminar, "he was not furthering the affairs of the employer when he attempted to assist an intoxicated female at a club at 2:00 a.m. and was struck by a vehicle." Nothing in our review of the record reveals that the hearing officer's injury determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16). Consequently, the hearing officer did not err in determining that the claimant has not had disability.

INTOXICATION

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 having an alcohol concentration to qualify as intoxicated under Section 49.01(2), Penal Code. Section 401.013(a)(1). The sobriety of the injured employee at the time of the injury is presumed but when the carrier rebuts that presumption with probative evidence of

intoxication, the burden shifts to the employee to prove that he or she was not intoxicated at the time of the injury. 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. Texas Workers' Compensation Commission Appeal No. 91012, decided September 11, 1991; Texas Workers' Compensation Commission Appeal No. 972159, decided November 25, 1997. In the instant case, the hearing officer's intoxication determination is supported by the test results that show a blood alcohol concentration level at 0.16, and by the opinion of a medical toxicologist. We conclude that the hearing officer's intoxication determination is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Veronica L. Ruberto
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge