

APPEAL NO. 181648
FILED SEPTEMBER 13, 2018

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 June 11, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable injury on (date of injury); (2) the compensable injury did not occur while the claimant was in a state of intoxication as defined in Section 401.013, from the introduction of a controlled substance or substance analogue as defined by Section 481.002 of the Health & Safety Code, so the appellant (carrier) is not relieved of liability for compensation on the ground of the claimant's intoxication; and (3) the claimant did have disability resulting from a compensable injury sustained on (date of injury), from (date), to the date of the CCH. The carrier appealed, disputing all of the ALJ's determinations. The claimant responded, urging affirmance of the ALJ's determinations.

DECISION

Reversed and rendered.

The claimant testified he passed out while driving to make a delivery which resulted in a motor vehicle accident. The claimant was immediately taken to the hospital, and medical records in evidence from that facility reflect that a urine sample taken on the date of injury tested positive for barbiturates.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

INTOXICATION

Section 406.032(1)(A) provides that the carrier is not liable for compensation if the injury occurred while the employee was in a state of intoxication. Section 401.013(a)(2)(B) defines intoxication as not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance or controlled substance analogue, as defined by Section 481.002 of the Health and

Safety Code. Section 401.013(c), amended effective September 1, 2005, provides that “[o]n the voluntary introduction into the body of any substance listed under Subsection (a)(2)(B), based on a blood test or urinalysis, it is a rebuttable presumption that a person is intoxicated and does not have the normal use of mental or physical faculties.”

As noted above, the evidence in this case established the claimant’s urine tested positive for barbiturates on the date of injury. The claimant testified that on the date of injury he had only taken his prescribed blood pressure and anti-anxiety medications. The claimant also testified that he had not taken barbiturates prior to his injury and was not under the influence of barbiturates on the date of injury. The claimant offered no testimony or other evidence that he had the normal use of his mental or physical faculties at the time of the injury.

The ALJ correctly noted the evidence established a rebuttable presumption that the claimant was intoxicated and that he did not have the normal use of his mental or physical faculties at the time of the injury. However, the ALJ stated in his discussion that the claimant credibly testified that he had not taken barbiturates prior to his injury and was not under the influence of barbiturates on the date of injury, and, therefore, the preponderance of the evidence supports that the claimant had the normal use of his mental or physical faculties at the time of the injury.

In Appeals Panel Decision 062507-s, decided January 31, 2007, the Appeals Panel noted that it disagreed with the carrier’s argument that under the 2005 amendment to Section 401.013(c), establishing a rebuttable presumption of intoxication based on a blood test or urinalysis, an injured employee’s lay testimony could not be considered sufficient to overcome the legal presumption of intoxication. However, under the facts of that case, the claimant’s one line statement that he was not intoxicated did not overcome the rebuttable presumption of intoxication established by the positive drug screen.

Although the claimant in the case on appeal testified that he did not take barbiturates prior to his injury and that he was not under the influence of barbiturates on the date of injury, it is undisputed that the claimant’s urine tested positive for barbiturates on the date of injury. No evidence was presented that the claimant had the normal use of his mental or physical faculties at the time of the claimed injury. The ALJ’s determination that the claimant was not in a state of intoxication at the time of the claimed injury is against the great weight and preponderance of the evidence. Accordingly, we reverse the ALJ’s determination that the compensable injury did not occur while the claimant was in a state of intoxication as defined in Section 401.013, from the introduction of a controlled substance or substance analogue as defined by Section 481.002 of the Health & Safety Code, so the carrier is not relieved of liability for

compensation on the ground of the claimant's intoxication. We render a new decision that the claimed injury did occur while the claimant was in a state of intoxication as defined in Section 401.013, from the introduction of a controlled substance or substance analogue as defined by Section 481.002 of the Health & Safety Code, so the carrier is relieved of liability for compensation on the ground of the claimant's intoxication.

COMPENSABLE INJURY AND DISABILITY

We have reversed the ALJ's intoxication determination and rendered a new decision that the claimed injury did occur while the claimant was in a state of intoxication as defined in Section 401.013, from the introduction of a controlled substance or substance analogue as defined by Section 481.002 of the Health & Safety Code, so the carrier is relieved of liability for compensation on the ground of the claimant's intoxication. Consequently, we reverse the ALJ's determinations that the claimant sustained a compensable injury on (date of injury), and that the claimant had disability resulting from a compensable injury sustained on (date of injury), from (date), to the date of the CCH. We render a new decision that the claimant did not sustain a compensable injury on (date of injury), and that the claimant did not sustain disability from (date), to the date of the CCH.

SUMMARY

We reverse the ALJ's determination that the compensable injury did not occur while the claimant was in a state of intoxication as defined in Section 401.013, from the introduction of a controlled substance or substance analogue as defined by Section 481.002 of the Health & Safety Code, so the carrier is not relieved of liability for compensation on the ground of the claimant's intoxication, and we render a new decision that the claimed injury did occur while the claimant was in a state of intoxication as defined in Section 401.013, from the introduction of a controlled substance or substance analogue as defined by Section 481.002 of the Health & Safety Code, so the carrier is relieved of liability for compensation on the ground of the claimant's intoxication.

We reverse the ALJ's determination that the claimant sustained a compensable injury on (date of injury), and we render a new decision that the claimant did not sustain a compensable injury on (date of injury).

We reverse the ALJ's determination that the claimant had disability resulting from a compensable injury sustained on (date of injury), from (date), to the date of the CCH, and we render a new decision that the claimant did not sustain disability from (date), to the date of the CCH.

The true corporate name of the insurance carrier is **NATIONAL CASUALTY COMPANY** 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:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge