

APPEAL NO. 980113

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 December 15, 1997. With respect to the issues before her, the hearing officer determined that the date the appellant (claimant) knew or should have known that her back pain was related to her employment was _____; that the claimant did not timely notify her employer of her injury; that the claimant sustained an injury in the course and scope of her employment but that it is not compensable because the respondent (carrier) is relieved of liability under Section 409.002; and that the claimant has not had disability because she did not sustain a compensable injury. In her appeal, the claimant essentially argues that the hearing officer's determination that she did not timely notify her employer of her injury is against the great weight and preponderance of the evidence. In its response, the carrier urges affirmance. The claimant did not appeal the hearing officer's determination that the date of injury for her occupational disease under Section 408.007 is _____, and that determination has become final under Section 410.169.

DECISION

Affirmed.

Because only the timely notice issue is before us on appeal, our factual recitation will be limited to facts germane to that issue. The claimant testified that on _____, she began to develop pain in her low back, which she attributed to the fact that she was having to work on a sewing machine that was not designed for her. She stated that her regular sewing machine was not working correctly and so she had to work on other machines that were not in use during her shift. She stated that she told her supervisor that she had back pain from working on other sewing machines every day but her supervisor ignored her complaints and told her to keep working. The claimant stated that on June 19, 1997, her pain became so severe that she was not able to continue working so she went to the employer's nurse's office. She further testified that on June 23, 1997, she first sought medical treatment for her back with (Dr. F). On direct examination the claimant testified that she learned that her back problems were because of her repetitive work activities at her June 23rd doctor's appointment and that she reported her injury to her employer later that day. On cross-examination, the claimant stated that she reported her injury to employer on June 19, 1997, when the pain got so bad that she could not work and she went to the nurse's office. After further cross-examination, the claimant stated that she actually reported a work injury to her employer in _____, when she told her supervisor every day that it was hurting her back to work on sewing machines that were not ergonomically designed for her.

(Ms. A), the claimant's supervisor, testified that she first became aware that the claimant was alleging a work-related back injury in June 1997, when the nurse talked to her after the claimant's visit. Ms. A stated that the claimant never told her that she was experiencing low back pain from working on sewing machines other than her normal

machine. She stated that the claimant told her that she was having trouble with her sewing machine in _____ but Ms. A denied that the claimant had told her that she was experiencing pain because of her work activities. (Mr. R), the plant manager, testified that the claimant came to him in _____ and told him that she was having trouble with her machine and that the mechanics were not properly repairing her machine. However, he denied that the claimant had ever told him that she was injured or that working on machines other than her own was causing her to have back pain.

The hearing officer determined that the claimant did not timely notify her employer of her injury. There was conflict in the evidence on that issue. The claimant variously testified that she reported her injury in _____, on June 19, 1997, and on June 23, 1997. Ms. A testified that she did not learn that the claimant was alleging a work-related back injury until June 1997. It was for the hearing officer, as the sole judge of the relevance, materiality, weight and credibility of the evidence (Section 410.165(a)), to resolve the conflicts and inconsistencies in the evidence. The hearing officer determined that the claimant reported her injury to her employer on June 23, 1997, well beyond 30 days after _____, the date of injury. We note that the claimant maintained that she had timely notified her employer of her injury and did not make any assertion that her failure to give timely notice to her employer was excused by good cause. Nothing in our review of the evidence demonstrates that the hearing officer's notice determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for disturbing it on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Because we affirm the hearing officer's determination that the carrier is relieved from liability under Section 409.002 due to the claimant's failure to timely notify her employer of her injury, we likewise affirm her determinations that the claimant did not sustain a compensable injury and that she did not have disability.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge