

APPEAL NO. 990002

On December 10, 1998, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The appellant (self-insured) requests reversal of the hearing officer's decision that the respondent (claimant) sustained a compensable injury in the form of an occupational disease on _____; that the injury is a rotator cuff tear of the right shoulder; that the date of injury is _____; that the claimant reported an injury to the self-insured on July 17, 1998; and that the claimant had disability resulting from the occupational disease beginning on August 15, 1998, "and continuing." The claimant requests affirmance. There is no appeal of the hearing officer's decision that the compensable injury does not extend to and include the claimant's neck and low back.

DECISION

Affirmed as reformed herein.

The claimant had the burden to prove that she was injured in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The claimant teaches English in the self-insured's high school. She testified that, because the school is overcrowded, she has to carry her school books, papers, and supplies in two canvas bags, one over each shoulder, to various places on the school campus many times a day, and that the bags are heavy. On August 19, 1998, Dr. W performed an operation on the claimant's right shoulder to repair a torn rotator cuff. Dr. W wrote that the claimant was injured carrying heavy bags around the school over her shoulder and that the claimant's shoulder injury definitely occurred at work. Dr. L wrote that the claimant has a repetitive injury to her right shoulder. The hearing officer found that as a result of repetitively carrying the bags over her shoulders, the claimant tore a rotator cuff in her right shoulder and she concluded that the claimant sustained a compensable injury in the form of an occupational disease, that being a torn rotator cuff in her right shoulder. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that the hearing officer's decision that the claimant sustained a compensable injury to her right shoulder is supported by sufficient evidence and is not against the great weight and preponderance of the evidence.

The date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Section 408.007. There is much conflicting evidence on the date of injury. The hearing officer resolved the conflicts in favor of the claimant and chose to believe the claimant's testimony that she did not know until _____, that she had a right shoulder rotator cuff tear that was work related and that Dr. G informed her of that on that date. We conclude that the hearing

officer's decision that the date of injury is _____, is supported by sufficient evidence and is not against the great weight and preponderance of the evidence.

Section 409.001 provides that if the injury is an occupational disease, the employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. It is undisputed that the claimant notified the self-insured of her injury on July 17, 1998. We conclude that the hearing officer's decision that the claimant timely reported her injury to her employer is supported by sufficient evidence and is not against the great weight and preponderance of the evidence.

Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). The hearing officer decided that the claimant had disability beginning August 15, 1998, "and continuing."

The claimant's testimony and the medical reports support a finding of disability. The self-insured contends in the alternative that the hearing officer's decision should be modified to delete the words "and continuing" and that the words "through the date of the CCH, December 10, 1998," should be inserted. While the claimant may have had disability after the date of the CCH, the Appeals Panel has held that the hearing officer only has jurisdiction to determine disability up to the date of the CCH. Texas Workers' Compensation Commission Appeal No. 971871, decided October 29, 1997. Thus, we reform the hearing officer's decision on disability to read that the claimant had disability resulting from the occupational disease from August 15, 1998, through the date of the CCH, December 10, 1998. With regard to disability that may occur after the date of the CCH, Section 408.081(b) provides for weekly payment of income benefits as and when they accrue without order from the Commission.

As reformed, the hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Alan C. Ernst
Appeals Judge