

APPEAL NO. 000297

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 December 27, 1999. In response to the issues at the CCH, the hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury to her hands, arms, shoulders, cervical spine and thoracic spine "on" _____; that she did not have disability; and that respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely report her alleged injury to her employer.

The claimant appeals the adverse determinations on sufficiency grounds. Carrier responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that she did not sustain a compensable injury to her hands, arms, shoulders, cervical spine and thoracic spine on _____. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The 1989 Act defines "injury" as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). The definition of "injury" includes occupational diseases. An occupational disease is defined as "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body," but does not include "an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). To establish that she has an occupational disease, the claimant's evidence must show a causal connection between the employment and the disease. Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991. Whether the necessary causation exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994.

Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that on _____, she began to feel neck and back pain while she was lifting boxes of merchandise at work. She said she was suffering from a cold and that she did not realize she had an injury at that time. Claimant said she also felt a loss of

strength in her arms. She said she had been experiencing numbness in her hands since 1997. Claimant testified that by January 29, 1999, she was very sick and she had pain in her hands, back, and neck.

The record contained several medical records from various medical care providers. In an April 9, 1999, report, Dr. W stated under "assessment," "inflammatory osteoarthritis, improved on low dose Prednisone and sulfasalazine" and "probable tardy ulnar nerve palsy being evaluated by the neurologist." In a June 18, 1999, report, Dr. G noted that claimant underwent EMG testing, a cervical MRI, and multiple lab tests, and that the test results were normal. She noted that one doctor and a physical therapist diagnosed a cervical and thoracic strain. Among Dr. G's diagnoses were cervical and thoracic strain and upper extremity tingling with etiology unknown.

The hearing officer was the sole judge of the credibility of the witnesses and medical evidence. As the fact finder, he considered the issue of whether claimant sustained a compensable injury "on" _____, and resolved this issue against claimant. We will not substitute our judgment for his in that regard because the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Claimant contends the hearing officer erred in determining that she did not have disability. 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). Because there was no compensable injury, there can be no disability.

Claimant contends the hearing officer erred in determining that she did not timely report her injury to her employer. Claimant asserts that she became aware that her injury was work related on June 2, 1999, and that she reported her injury on June 11, 1999. Generally, a claimant must report an injury to his or her employer within the requisite 30-day period, Section 409.001, unless there is good cause for the failure to timely report the injury. Section 409.002(2). Generally, a claimant must report an occupational disease injury to his or her employer within 30 days of the date the employee knew or should have known of the condition and that it was work related. Section 409.001(a)(2).

The hearing officer determined that claimant did not sustain a compensable injury "on" _____. Claimant asserted that her alleged injury was caused by repetitive activities that day. It appears that this case may have involved a specific injury rather than an occupational disease repetitive trauma injury. See Texas Workers' Compensation Commission Appeal No. 992851, decided January 27, 2000. To the extent that this case involved a specific injury that took place "on" _____, the parties stipulated that claimant "notified the employer of a work related injury for the first time on June 11, 1999." Therefore, there was no timely reporting of any specific injury.

Claimant also said that Dr. V told her on June 2, 1999, that she had a repetitive trauma injury. Claimant testified that she told her manager, Mr. E that she could not

continue to do the work and that she was having problems with her back. She said that in January 1999, she “told [him] [that her] back was hurting a lot” and that “the operation I was doing was hurting [her], that [she couldn’t] continue doing it like that.” Claimant testified that her work had involved unloading freight. She said she told Mr. E that she wanted to step down from her position and go back to being a cashier. Claimant said that by January 29, 1999, her back, neck, and hands were hurting.

To the extent that this case involved an occupational disease repetitive trauma injury, the hearing officer could and did find it was not timely reported. There was evidence that in _____, claimant decided not to do the freight unloading work anymore because it was “hurting” her. The hearing officer determined that claimant did not report her injury until June 11, 1999, which was more than 30 days after the date claimant knew or should have known that her injury may be work related. We perceive no error. The hearing officer’s determination that claimant did not timely report her injury is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We affirm the hearing officer’s decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge