

APPEAL NO. 001025

On March 30, 2000, 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.* The hearing officer resolved the disputed issues by deciding that appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that claimant has not had disability because she did not sustain a compensable injury; that the date of injury was _____; and that respondent (carrier) is relieved of liability under Section 409.002 because of claimant's failure to timely notify her employer of her claimed injury under Section 409.001. Claimant contends that she did sustain an occupational disease and that she timely reported her injury to her employer. Carrier requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36). Section 401.011(16) defines disability. Section 409.001(a) provides that, if the injury is an occupational disease, an 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. Section 409.001(b) provides that the notice of injury may be given to the employer or to an employee of the employer who holds a supervisory or management position.

Claimant claims a repetitive trauma injury to her neck, left shoulder, and left upper extremity while working for (employer). There is no dispute that the date claimant knew or should have known that her claimed injury may be related to her employment was _____. Claimant began working for employer in 1992. Claimant testified that her job as a packer on the assembly line requires constant reaching, bending, twisting, and lifting and that on _____, she had pain in the area between her neck and left shoulder while working. Claimant said that on _____, she went to GS, a physical therapist at employer's plant, and reported her work-related injury and received treatment. Claimant said that she continued to work and first went to a doctor for her injury on October 12, 1999. Claimant said that she did not report her injury to her supervisor until October 13, 1999, when she completed an incident report.

On October 14, 1999, Dr. G diagnosed claimant as having a left trapezius strain, a left supraspinatus strain, a left shoulder strain, and a left upper extremity neuropathy. Dr. G has continued to treat claimant and he wrote that he is seeing claimant for injuries she sustained at work on _____. Dr. G referred claimant to Dr. O who diagnosed a neck sprain, left shoulder sprain, left elbow sprain, and possible left cubital tunnel syndrome. Dr. G took claimant off work until February 14, 2000. MRIs of claimant's cervical spine, left shoulder, and left elbow were normal, as was an EMG of her left upper extremity.

GS, the physical therapist claimant said she reported her injury to on _____, testified that in April 1999 she was employed by a hospital and that she was at employer's plant as a contract worker. GS said that employer's policy in _____ was for employees to report work-related injuries to their supervisor, that she did see claimant at the clinic at employer's plant, that she could not recall when she saw claimant, and that she could not recall what claimant's complaints were. DK, employer's workers' compensation manager, testified that employer's policy before, during, and after _____, is for employees to report work injuries to their supervisor and that there was no record of claimant's having reported a work injury to claimant's supervisor prior to October 1999. JF, claimant's coworker, testified that in _____ employees could report work injuries to the physical therapist. In a written statement, JF stated that claimant complained of shoulder pain and that claimant went to therapy. Another coworker stated in a written statement that claimant went to therapy for her shoulder. Employer documents dated May 1999 indicate that work injuries are to be reported to supervisors. Claimant said that the reporting policy was changed in May 1999.

Claimant had the burden to prove that she sustained a compensable injury and that she gave timely notice of injury to her employer. The hearing officer found that claimant did not sustain injuries due to repetitive trauma while working in the course and scope of her employment and that claimant did not report her claimed injuries to her employer within 30 days of _____, and did not have good cause for not doing so. The hearing officer concluded that claimant did not sustain a compensable injury in the form of an occupational disease, that carrier is relieved from liability under Section 409.002 because of claimant's failure to timely notify her employer of her claimed injury under Section 409.001, and that claimant has not had disability because she did not sustain a compensable injury. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16).

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there is conflicting evidence, as there is in this case, the hearing officer has the responsibility as the trier of fact to resolve the conflicts and determine what facts have been established. As the trier of fact, the hearing officer may believe all, part, or none of the testimony of any witness. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge