

## APPEAL NO. 002549

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 12, 2000, a contested case hearing (CCH) was held. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) sustained a repetitive trauma injury; that the date of injury was \_\_\_\_\_; that the respondent/cross-appellant (carrier) is relieved of liability under Section 409.002 because the claimant failed, without good cause, to give timely notice of her injury to her employer under Section 409.001; that the claimant has not had disability; and that the claimant timely filed a claim for compensation with the Texas Workers' Compensation Commission within one year of the date of injury as required by Section 409.003. The claimant appealed the hearing officer's decision on the issues of date of injury and timely notice of injury. The carrier appealed the hearing officer's decision on the issues of date of injury and repetitive trauma injury and also appealed the hearing officer's finding that due to the claimed injury, the claimant was unable to obtain and retain employment at wages equal to her preinjury wage from July 30, 1999, to the date of the CCH. There is no appeal of the hearing officer's determination that the claimant timely filed a claim for compensation.

### DECISION

The hearing officer's decision is affirmed in part and reversed and rendered in part.

The claimant worked in the employer's soft shoe factory for 21 years and she and her supervisor described the repetitive hand movements required in the claimant's work activities. In April 1999 the claimant was diagnosed as having bilateral carpal tunnel syndrome. Numerous medical reports are in evidence. The claimant claims a repetitive trauma injury, which is defined in Section 401.011(36). The hearing officer decided that the claimant sustained a work-related repetitive trauma injury and that due to that injury the claimant was unable to obtain and retain employment at wages equal to her preinjury wages from July 30, 1999, through the date of the CCH. There is conflicting evidence in this case. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's determinations that the claimant sustained a repetitive trauma injury and that due to the claimed injury the claimant was unable to obtain and retain employment at wages equal to her preinjury wages from July 30, 1999, through the date of the CCH are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer determined that the date of injury for claimant's occupational disease under Section 408.007, the date the claimant knew or should have known her disease may be related to the employment, was \_\_\_\_\_, and that the claimant reported her work injury to the employer on \_\_\_\_\_. There is conflicting evidence regarding the date of injury and the date the injury was reported to the employer. As the finder of fact, the hearing officer resolves the conflicts in the evidence. We conclude that

the hearing officer's determinations on the date of injury and the date the injury was reported to the employer are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

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. The hearing officer determined that the claimant did not timely report her work injury to the employer because \_\_\_\_\_, was 31 days after \_\_\_\_\_, and that, because the claimant did not timely report her injury, the carrier is relieved of liability under Section 409.002. The hearing officer also determined that, because the carrier is relieved of liability due to the claimant's failure to timely report the injury, the claimant did not have a compensable injury and thus did not have disability. We conclude that the hearing officer erred in determining that the claimant did not timely report her injury because the 30th day after \_\_\_\_\_, was Sunday, \_\_\_\_\_, and the claimant gave notice on the next day, \_\_\_\_\_. During the time period under consideration, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.3(a)(3) (Rule 102.3(a)(3)) provided that, if the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday or legal holiday. In Texas Workers' Compensation Commission Appeal No. 950658, decided June 12, 1995, the Appeals Panel, citing Sections 311.014(a) and (b) of the Code Construction Act and Rule 102.3(a), held that where the 30th day after the date of injury was a Sunday, notice of injury was timely when given on the next working day, a Monday.

We find no reversible error in the exclusion of Claimant's Exhibit No. 8, a settlement agreement that apparently pertains to a discrimination lawsuit.

We affirm the hearing officer's decision that the claimant sustained a repetitive trauma injury and that the date of injury was \_\_\_\_\_. We reverse the hearing officer's decision that the claimant did not give timely notice of injury to the employer, that the carrier is relieved of liability, that the claimant did not sustain a compensable injury, and that the claimant did not have disability, and we render a decision that the claimant gave timely notice of injury to the employer, that the carrier is not relieved of liability, that the claimant sustained a compensable injury, and that the claimant had disability as defined

by Section 401.011(16) from July 30, 1999, through the date of the CCH.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge