

APPEAL NO. 002644

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 October 13, 2000. With regard to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable, repetitive trauma injury and that the appellant (carrier) is not relieved from liability because of the claimant's failure to give timely notice under Section 409.002.

The carrier appealed, contending that the hearing officer, in her "Decision and Order," failed to mention certain facts which "would have one to believe that . . . critical piece[s] of evidence [were] not considered." The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds to the points raised and urges affirmance.

DECISION

Affirmed.

The claimant was employed as the "Finance Director" by an automobile dealership (employer). She testified that on or about _____, she began to have sharp pains in her right shoulder due to cradling a telephone between her ear and her right shoulder while making calls to assist customers in financing automobile purchases. The claimant testified that she would take notes and work on the computer simultaneously while talking on the telephone on an average of four hours a day, six days a week. The claimant testified that she verbally reported the injury to MB in early October 1999. While MB acknowledges that the claimant complained of shoulder pains and aches, he contended that the claimant did not report a work-related injury. The claimant did not file an Employer's First Report of Injury or Illness (TWCC-1) until March 31, 2000. Dr. M, in reports dated March 22 and August 22, 2000, diagnosed the claimant with "shoulder impingement syndrome caused by the repetitive motion at work." Another doctor indicates that the claimant has "impingement symptoms" but "had no specific trauma."

The hearing officer, in two places in her Statement of the Evidence, comments that the claimant's testimony was credible and that MB's testimony "was evasive and vague." The carrier, in its appeal, argues that the hearing officer did not mention that the claimant "had a telephone hook," that the claimant played golf with clients and complained of shoulder pain, and that a group health carrier had paid \$22,531.50 of medical bills (election of remedies is not an issue). The carrier also complains that "there was no mention in the Order of the lengthy discussion of the claimant's actions surrounding the completion of the [TWCC-1]." Section 410.168 provides that the hearing officer make written findings of fact and conclusions of law, a determination of benefits due, and an award of benefits. The hearing officer in this case, in addition to a one-page summarization of the evidence, made 30 findings of fact to support her two conclusions of law. In the summary of the evidence, the hearing officer specifically mentioned that "[m]uch time and effort was spent . . . [regarding the TWCC-1] and why [the claimant] did not complete it sooner."

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Kenneth A. Huchton
Appeals Judge