

APPEAL NO. 002867

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 August 9, 2000. On remand, he held that the appellant (claimant) did not sustain a repetitive trauma injury or have disability. He further found that the claimant had not timely reported his injury to his employer.

The claimant appeals all decisions against him. The respondent (carrier) responds with facts that support the decision.

DECISION

We affirm the hearing officer's decision and order.

Appeal of No-Injury Finding

The hearing officer did not err in finding that the claimant failed to prove that he sustained a repetitive trauma injury while working on a production line for a furniture manufacturer. The claimant testified only as to the generalized use of his hands to perform a variety of activities; there was opposing evidence that what he did was neither repetitive nor traumatic and that he was working light duty due to an _____ upper back injury. Section 401.011(36) defines "repetitive trauma injury" as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally. Davis v. Employer's Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.) The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The conclusions drawn by the hearing officer are supported by the record.

Appeal of No-Disability Finding

The hearing officer did not err in finding that the claimant did not have disability. Section 401.011(16) defines "disability" as: "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage." Without a finding that there has been a compensable injury, there can be no disability. The hearing officer could also choose to believe that the claimant remained physically able to perform his work after January 3, 2000.

Appeal of Untimely-Notice Finding

The hearing officer did not err in finding that the claimant did not give timely notice and that the carrier is relieved from liability for the claim. The phrase "knew or should have known," as used in the date of injury for an occupational disease in Section 408.007 and the notice statute in Section 409.001(a)(2), cannot be interpreted to yield two different dates. Given the stipulation on the date of injury as _____, and the evidence that the claimant did not report the injury until several months later, the claimant was actually arguing that he had good cause for not timely reporting his injury. He based this on being told by the ombudsman in March 2000 that he had a repetitive trauma injury rather than a condition linked to his _____ injury. Because this was the crux of the notice argument, and it was rejected by the hearing officer, the hearing officer's decision implies a finding that there was no good cause for the late notice. The evidence supports the hearing officer's decision.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951), and we affirm the decision on all appealed points.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Robert W. Potts
Appeals Judge