

APPEAL NO. 010066

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 20, 2000, a hearing was held. The hearing officer resolved the disputed issues by deciding that the respondent/cross-appellant (claimant) sustained an occupational disease (right carpal tunnel syndrome (CTS)) in the course and scope of her employment with a date of injury of _____; that the injury is not compensable because the claimant failed to timely notify her employer of the injury under Section 409.001 thus relieving the appellant/cross-respondent (carrier) of liability under Section 409.002; and that, because the injury is not compensable, the claimant has not had disability as defined by Section 401.011(16). The claimant appealed the hearing officer's decision that she did not sustain a compensable injury, that she did not give timely notice of injury to her employer, and that she has not had disability. The carrier appealed the hearing officer's finding that the claimant sustained an occupational disease injury in the course and scope of her employment.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant sustained an injury in the form of an occupational disease. The evidence reflects that the claimant worked as a packer for the employer for five years and that she inspected and packed 20,000 light switches a day. Dr. R wrote that the claimant's right wrist CTS developed over the course of her employment and was caused by repetitive trauma from repetitive movements at work. The hearing officer's finding that the claimant sustained an injury in the form of an occupational disease in the course and scope of her employment is supported by sufficient evidence and is 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 did not err in determining that the carrier is relieved of liability under Section 409.002 because of the claimant's failure to timely notify her employer of her injury under Section 409.001. The claimant does not dispute that the date of injury was _____. There was conflicting evidence regarding whether the claimant notified her employer of her injury within 30 days of _____. The employer's human resources manager testified that the employer was not notified that the claimant was claiming a new work-related injury until about three days before the Employer's First Report of Injury or Illness (TWCC-1) was completed on September 27, 1999. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact the hearing officer resolves the conflicts in the evidence. The hearing officer's decision on the notice issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain.

The hearing officer did not err in determining that the claimant has not had disability because without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge