

APPEAL NO. 011084
FILED JUNE 21, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 26, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease, although she was injured and her date of injury was _____. The hearing officer found that this injury was not compensable because the respondent (carrier) was relieved from liability under Section 409.002 due to the claimant's failure to timely notify the employer pursuant to Section 409.001. The hearing officer further held that the carrier did not waive the right to dispute the compensability of the claimed injury because it acted in accordance with Section 409.021. The claimant appeals on sufficiency grounds and seeks reversal. The respondent responds and urges that the Appeals Panel affirm the decision and order of the hearing officer in all respects.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant, while sustaining "damage to the physical structure of her body occurring as the result of repetitious, physically traumatic activities that occurred over time and arose out of and in the course and scope of her employment," did not sustain a compensable injury in the form of an occupational disease. The evidence adduced at the CCH supports the hearing officer's determination in that he found that the claimant knew or should have known that her injuries were work-related _____¹, but failed to notify her employer of her injury not later than the thirtieth day after _____. Testimony at the hearing by the claimant's supervising attorney and two of her coworkers demonstrated that while the claimant told them she felt she had been injured, she told them it was due to a number of incidents occurring outside of the workplace, including a fall at home and a motor vehicle accident. Therefore, the hearing officer determined that neither the employer nor any supervisor of the claimant knew of the job relatedness of the claimant's injury not later than the 30th day after _____, as the claimant stipulated that the carrier received her first written notice of her claim August 10, 2000.

The hearing officer did not err in determining that the carrier was relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001. The hearing officer found that the claimant knew or should have known that her injury was work-related on _____; therefore, to timely notify her employer, she would have had to have done so on or before July 29, 2000. The claimant does not dispute that the carrier received her first written notice of her injury

¹ _____, was the date upon which the claimant first heard from a physician that her condition was probably carpal tunnel syndrome and likely caused by her work duties, including typing.

August 10, 2000, though she did testify that she notified her supervisor prior to that time, both before and after her _____, doctor's appointment. The hearing officer found no good cause for the claimant's failure to timely notify her employer.

The hearing officer did not err in determining that the carrier did not waive its right to contest the compensability of the claimed injury because the carrier contested the claim in accordance with Section 409.021. The evidence adduced at the hearing showed that the carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), disputing the compensability of the claimed injury, more than seven but less than sixty days after receiving its first written notice of the claim.

The parties presented conflicting evidence on the issues in dispute. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust (Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)), although another fact finder could have reached different conclusions. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). Therefore, this tribunal will not disturb the challenged findings herein. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, we affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill

Appeals Judge