

APPEAL NO. 011107
FILED JULY 05, 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 was held on May 2, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury; that the date of injury is _____; that the claimant timely reported his injury to his employer; and that he had disability, as a result of his compensable injury, from November 27, 2000, through the date of the hearing. In its appeal, the appellant (carrier) asserts error in each of those determinations. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained compensable occupational disease injury to his low back. An occupational disease includes a repetitive trauma injury. Section 401.011(34). A "repetitive trauma injury" is defined 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." Section 401.011(36). The hearing officer is the judge of the weight and credibility of the evidence, resolves conflicts and inconsistencies in the evidence, and decides what facts the evidence has established. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The claimant's testimony and the medical evidence provide sufficient evidentiary support for the hearing officer's injury determination and our review of the record does not demonstrate that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the hearing officer's injury determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer found that the date of injury of the low back injury under Section 408.007, the date the claimant knew or should have known that his problem with his low back may have been work related, is _____. The date of injury of an occupational disease is generally a question of fact for the hearing officer to resolve. It was the hearing officer's prerogative to credit the claimant's testimony and to determine that the date of injury is _____. That determination is not so against the great weight of the evidence as to compel its reversal on appeal.

The success of the carrier's arguments that the claimant did not timely report his injury and that he did not have disability are dependent upon the success of its arguments that the claimant did not sustain a compensable injury and that the date of injury was _____, as opposed to the _____, date found by the hearing officer. Given our

affirmance of the hearing officer's injury and date-of-injury determinations, we likewise affirm the hearing officer's notice and disability determinations.

Finally, we find no merit in the carrier's assertion that the hearing officer erred in not defining the exact nature of the claimant's repetitive trauma low back injury. The issue before the hearing officer was whether the claimant sustained a compensable repetitive trauma injury. There was no issue as to whether certain conditions or diagnoses are included and, as such, the hearing officer did not err in not defining the nature and extent of the injury.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge