

APPEAL NO. 011124
FILED JUNE 25, 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. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury in the form of an occupational disease (repetitive injury); (2) the claimant knew or should have known that the disease may be related to the employment on _____; (3) appellant (carrier) is not relieved from liability for the compensable injury, pursuant to Section 409.002, because the claimant timely notified his employer pursuant to Section 409.001; and (4) The claimant had disability from October 10, 2000 through the date of the hearing. Carrier appealed the hearing officer's determinations on sufficiency grounds. Claimant urges affirmance.

DECISION

Affirmed.

Compensable Injury

The hearing officer did not err in determining that the claimant sustained a compensable injury in the form of an occupational disease (repetitive injury). The claimant had the burden to prove that he suffered damage or harm to the physical structure of the body occurring as a result of repetitious, physically traumatic activities that occurred over time and arose out of an in the course and scope of employment. See Texas Workers' Compensation Appeal No. 992486, decided December 29, 1999; Section 401.011(34) and (36). There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer could conclude from the evidence presented that the claimant injured himself as a result of the use of his upper extremities in his job as a printer. The claimant testified in detail as to motive nature and quality of the repetitious movements of his hands in his daily machine printing tasks. The Appeals Panel, an appellate-reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Date of Injury

The hearing officer did not err in determining that the date of injury is _____, the day his left hand give way at work. Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known

that the disease may be related to the employment. The Appeals Panel has said that the date of injury is when the injured employee, as a reasonable person, could have been expected to understand the nature, seriousness, and work-related nature of the disease. Texas Workers' Compensation Appeal No. 94534, decided June 13, 1994, citing Commercial Insurance Co. of Newark, N.J. v. Smith, 596 S.W.2d 661 (Tex. Civ. App.-Fort Worth 1980, writ ref'd n.r.e.). While a definitive diagnosis from a doctor is not required, neither is the employee held to the standard of a doctor's knowledge of causation. See Texas Workers' Compensation Commission Appeal No. 91097, decided January 16, 1992. The hearing officer determined that the claimant knew or should have known the disease may be related to his employment on _____. We cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Notice of Injury

The hearing officer did not err in determining that the carrier is not relieved from liability for the compensable injury, pursuant to Section 409.002. Section 409.001(a)(2) provides, in relevant part, that an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier of liability, unless the employer or carrier has actual knowledge of the injury, good cause exists, or the claim is not contested. Section 409.002.

The carrier's challenge to the hearing officer's notice determination is premised upon the success of its argument that the claimant knew or should have known that his injury may be related to his employment several months prior to _____. Given our affirmation of the date of injury determination and in view of the evidence that the claimant notified his employer of the work-related injury on _____, we likewise affirm the hearing officer's determination with regard to this issue.

Disability

The hearing officer did not err in determining that the claimant had disability from October 10, 2000, through the date of the hearing. Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 000303, decided March 29, 2000. 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, supra

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge