

APPEAL NO. 011163
FILED JULY 9, 2001

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 2, 2001, a contested case hearing (CCH) was commenced with the record closing on May 3, 2001. With regard to the issues before him, the hearing officer determined that the appellant (claimant herein) did not suffer a compensable injury in the form of an occupational disease; that the date of the claimed injury was _____; that the claimant failed to timely report this injury to her employer without good cause, relieving the respondent (carrier herein) from liability; and that the claimant did not have disability. The claimant appeals, contending the evidence established that the claimant suffered an injury; that the date of injury was _____, or, in the alternative, that the claimant had good cause until that date to report an injury; and that the claimant had disability from September 8, 2000, continuing through the date of the CCH. The carrier responds that there is sufficient evidence to support the determinations of the hearing officer.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

There was conflicting evidence presented at the CCH on the appealed issues. The claimant testified that she had worked as an assembly worker, and when parts came out of a machine, she had to bend over a table to tape them to air conditioner units. The claimant also testified that she developed pain in her back on _____. The claimant testified that she continued to work until August 23, 2000, when she woke up with a lot of pain in her back and neck. The claimant testified that on August 24, 2000, she reported to her supervisor that she had been injured due to repetitive trauma from bending over a table performing job tasks. The claimant was sent to (center) on August 24, 2000, and saw Dr. A who diagnosed her with a thoracic strain and who gave a date of injury of _____. The employer continued to pay the claimant wages. On September 8, 2000, the claimant treated with Dr. I at (clinic), who diagnosed her with cervical strain, thoracic strain, lumbar strain and bilateral trapezius injury. Dr. I gave a date of injury of _____, and placed the claimant on an off-work status. The claimant testified since September 8, 2000, no doctor has returned her to work, and that the employer discontinued her wages on that date.

Medical evidence, including lumbar and cervical MRIs were admitted into evidence. There was also testimony from the claimant's supervisor that the claimant's job did not involve bending or repetitive activity.

The question under our standard of review is whether the hearing officer's determinations were 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).

Applying this standard, we find sufficient evidence to support the hearing officer's finding that the claimant did not suffer a compensable injury in the form of an occupational disease. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. 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. Section 408.007. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission that good cause exists for failure to provide notice of injury to an employer in a timely manner or that the employer has actual knowledge of the injury can relieve the claimant of the requirement to report the injury. Section 409.002.

In the present case, the hearing officer found that the claimant's date of injury was _____, and that the claimant did not have good cause for not reporting her injury until August 24, 2000. When the claimant first knew, as a reasonably prudent person, that her neck and back condition might be related to her employment is a question of fact. Applying our standard of review, we find that the hearing officer's finding that the date the claimant first knew that she had a work-related injury was _____, is sufficiently supported by the evidence. Nor do we find any error by the hearing officer in finding that the claimant did not have good cause for not reporting her injury until August 24, 2000.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition disability depends upon a compensable injury. See Section 401.011(16).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert E. Lang
Appeal Panel
Manager/Judge

Philip F. O'Neill
Appeals Judge