

APPEAL NO. 011266
FILED SEPTEMBER 04, 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 June 25, 2001. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) did not sustain a compensable repetitive trauma injury on _____; that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed to timely notify her employer of an injury under Section 409.001; and that the claimant has not had disability. The claimant appealed and the carrier responded.

DECISION

The hearing officer's decision is affirmed in part and is reversed and rendered in part.

REPETITIVE TRAUMA INJURY

A "compensable injury" is defined in Section 401.011(10) and a "repetitive trauma injury" is defined in Section 401.011(36). The claimant testified that she injured her right upper extremity at work using a screw gun over a period of about two months and her treating doctor noted that the claimant has a "repetitive motion injury" to her right hand and wrist. There was other evidence that the claimant was frequently assigned various duties on the assembly line. The hearing officer resolved the conflicts in the evidence and found that the claimant did not sustain an injury that was caused by her job duties for the employer and determined that the claimant did not sustain a compensable repetitive trauma injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer's decision that the claimant did not sustain a compensable repetitive trauma injury 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.

DISABILITY

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." 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).

TIMELY NOTICE OF INJURY

An occupational disease includes a repetitive trauma injury. Section 401.011(34). 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. Section 409.001(a) provides that if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee 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. The claimant contended that her date of injury under Section 408.007 was _____, and the hearing officer found that that was the date of injury. That finding is not appealed. The hearing officer further found that the claimant did not report an injury to the employer not later than the 30th day after the date of injury. We hold that the hearing officer's determination that the claimant did not timely notify her employer of her claimed injury is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. This is so because in evidence is a transcription of a recorded statement that the claimant gave to the carrier's claims service representative on February 7, 2001, and at the start of that statement the representative states that she is interviewing the claimant about an injury that the claimant reported to the employer. The recorded interview concerns the claimant's claim of an injury from using the screw gun at work, and the claimant states in that interview that the claimant reported her claimed injury to the employer's main office the day before the interview took place. The date of the recorded interview, February 7, 2001, is within 30 days of the date of injury, _____, and the claims representative clearly states that she is interviewing the claimant about an injury that the claimant reported to the employer. The hearing officer's decision that the carrier is relieved of liability under Section 409.002 because of the claimant's failure to timely notify the employer of an injury under Section 409.001 is reversed and a new decision is rendered that the carrier is not relieved of liability under Section 409.002 because the claimant timely reported the claimed injury to her employer under Section 409.001.

The hearing officer's determinations that the claimant did not sustain a compensable repetitive trauma injury and that the claimant has not had disability are affirmed. The hearing officer's decision that the carrier is relieved of liability under Section 409.002 because the claimant failed to timely notify the employer of her injury under Section 409.001 is reversed and a new decision is rendered on the timely notice issue that the carrier is not relieved of liability under Section 409.002 because the claimant timely notified the employer of her injury under Section 409.001. However, we affirm the hearing officer's decision and order that the carrier is not liable for benefits because of our affirmance of the hearing officer's determination that the claimant did not sustain a compensable repetitive trauma injury.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 N. ST. PAUL ST.
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge