

APPEAL NO. 011652  
FILED SEPTEMBER 6, 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 June 27, 2001. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable repetitive trauma injury on \_\_\_\_\_; that the claimant has had disability from January 9, 2001, through the date of the CCH; and that the appellant (carrier) is not relieved of liability under Section 409.002 because the claimant timely notified her employer of her injury under Section 409.001. The carrier appealed. No response was received from the claimant.

**DECISION**

The hearing officer's decision is affirmed.

**COMPENSABLE INJURY**

Section 401.011(10) defines "compensable injury," and Section 401.011(36) defines "repetitive trauma injury." The claimant testified that she began working for the employer as a customer service representative in August 2000 and that she worked five days a week, eight hours a day. She said that most of her time at work was spent typing customer information into a computer and that on \_\_\_\_\_, she began to experience pain in her hands, wrists, and arms. A written report from the claimant reflects that the onset of that pain occurred at work while typing on \_\_\_\_\_. The claimant went to a doctor on December 19, 2000, and that doctor diagnosed the claimant as having, among other things, carpal tunnel syndrome (CTS), and referred the claimant to another doctor. An EMG was then done, which revealed, among other things, bilateral CTS. The referral doctor diagnosed the claimant as having probable bilateral CTS and indicated that the claimant's symptoms could be caused by the claimant's work. While there is conflicting evidence on the issue of whether the claimant sustained a compensable repetitive trauma injury, such conflicts were for the hearing officer to resolve as the finder of fact. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's determination that the claimant sustained 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 claimant testified that she has been off work since January 9, 2001, because of her work-related injury and that the referral doctor has recommended that she have surgery for her CTS. The treating doctor's reports reflect that he has taken the claimant off work because of her work-related injury, and a functional capacity evaluation done in January 2001

indicates that the claimant cannot tolerate the demands of repetitive data entry computer work or typing. The hearing officer's decision that the claimant has had disability from January 9, 2001, through the date of the CCH, June 27, 2001, 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.

### **NOTICE OF INJURY**

Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury. 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 said that she knew she had a work-related injury on \_\_\_\_\_, and that is the date of injury found by the hearing officer. The claimant also testified that on December 6, 2000, she reported to the employer's benefits coordinator that she had a work-related injury, and there is evidence that the benefits coordinator is the person who handles workers' compensation claims for the employer and who notifies the carrier of claimed work-related injuries. Whether the benefits coordinator was a person eligible to receive notice under Section 409.001(b) was a fact question for the hearing officer to decide. Although there is conflicting evidence on the issue of timely notice of injury, the hearing officer's finding that the claimant reported her injury to her employer on December 6, 2000, and the hearing officer's determination that the carrier is not relieved of liability under Section 409.002 because the claimant timely notified the employer of an injury under Section 409.001 are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge