

APPEAL NO. 011769
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 July 10, 2001. The hearing officer resolved the disputed issues by determining that the appellant/cross-respondent (claimant) sustained a compensable injury on _____; that the respondent/cross-appellant (self-insured) is not relieved from liability under Section 409.002 because the claimant did not fail to timely notify the employer pursuant to Section 409.001; and that the claimant had disability resulting from the injury sustained on _____, beginning on November 20, 2000, and ending on May 12, 2001. The claimant appealed, requesting an Order correcting the inconsistencies regarding the date of injury in the Decision and Order, but otherwise urging affirmance. The self-insured appealed the hearing officer's Decision and Order, and the claimant filed a separate response, urging affirmance.

DECISION

Affirmed as reformed.

First, addressing the claimant's request to correct a "clerical" error, the date of injury certified at the benefit review conference (BRC) was _____. All of the testimony revolved around an incident that occurred on _____. The hearing officer determined the date of injury to be _____, in her Conclusions of Law. In the hearing officer's Statement of the Evidence and Findings of Fact, she erroneously refers to July 7, 2000, as being the date of injury. We reform those references to conform to the evidence and Conclusions of Law that _____, is the date of injury.

The hearing officer did not err in determining that the self-insured is not relieved from liability under Section 409.002. Section 409.001 requires that an employee notify the employer of an injury by the 30th day after the date the injury occurs. Failure to do so, absent a showing of good cause or actual knowledge of the injury by the employer, relieves the carrier and employer of liability for the payment of benefits for the injury. Section 409.002. Whether, and, if so, when, notice is given is a question of fact for the hearing officer to decide. There was conflicting evidence presented on the issue of notice. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). Upon review of the record submitted, we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the determination of the hearing officer that the claimant timely notified her employer of the injury is affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury, and as a result had disability. There was conflicting evidence on the injury and disability issues. The hearing officer resolved the conflicts and inconsistencies

in the evidence in favor of the claimant and she was acting within her role as the fact finder in determining that the claimant sustained her burden of proof on both issues. Nothing in our review of the record indicates that the challenged findings are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed as reformed.

The true corporate name of the insurance carrier is **THE SHERWIN WILLIAMS COMPANY** and the name and address of its registered agent for service of process is

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

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge