

APPEAL NO. 011957
FILED OCTOBER 11, 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 July 23, 2001. In case number (Docket No. 1), the hearing officer determined that the _____, injury respondent (claimant) sustained while working for (company A) did not extend to the disc bulge at C6-7. That determination was not appealed. In case number (Docket No. 2), the hearing officer determined that claimant sustained a new repetitive trauma neck injury while working for (company B), with a date of injury of _____; that claimant had good cause for not reporting the injury until _____; and that claimant had disability from March 20, 2001, continuing through the date of the hearing. The carrier for company B, (carrier 1) appealed these determinations on sufficiency grounds. The file does not contain a response from claimant or from company A's carrier, (carrier 2).

DECISION

We affirm.

We have reviewed the complained-of determinations regarding injury, date of injury, timely reporting, and disability, and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not 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).

We affirm the hearing officer's decision and order.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

CONCURRING OPINION:

While the bottom line does not change that much because the evidence supports a new injury and good cause for not timely reporting, I believe the preponderance of the evidence shows that a specific injury was sustained sometime in mid-January, when the claimant reported that he had a particularly strenuous day. The claimant was not required to recall the exact item he lifted, and the requirements of a specific injury can be met by a function lasting over a period of a few hours.

Sufficient proof of a repetitive trauma does not simply stop at asserting that one performs a variety of tasks frequently over an unspecified duration. Texas Workers' Compensation Commission Appeal No. 982649, decided December 23, 1998. "Repetitive trauma injury" is a term of art meant to cover a type of injury that truly is not specific, or that results from the cumulative effect of individual efforts, any one of which does not bring about noticeable injury at the time. It should not be used as a catch-all concept to gloss over evidentiary gaps. In my opinion, the hearing officer erred by not analyzing this as a specific-injury case and not finding a date of injury in January; but, I am

concurring because the evidence would still support, even with this new date of injury, good cause for the failure to timely report the claim because of attribution of symptoms to a prior injury.

Susan M. Kelley
Appeals Judge