

APPEAL NO. 012273
FILED NOVEMBER 7, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on June 18, 2001, the hearing officer determined that the respondent (claimant) sustained a compensable occupational disease of silicosis, and that the date of injury was _____. The appellant (carrier) has requested our review and asserts that these determinations are against the great weight of the evidence. The claimant's response urges the sufficiency of the evidence to support an affirmance.

DECISION

Affirmed.

Not appealed are findings that the claimant, who is 72 years of age, worked for the employer for approximately 40 years during which time he was exposed on a regular basis to silica dust; that he has silicosis, an occupational disease; that his exposure to silica dust throughout his employment with the employer was a producing cause of his silicosis; and that he reported his occupational disease to the employer by a letter received on _____. The carrier does challenge findings that the claimant knew or should have known that his silicosis was caused by his employment on _____, when he was so informed by Dr. M; and that prior to _____, the causal connection between the claimant's work and his silicosis was not reasonably apparent and no doctor or any one else advised him of a possible or actual connection between his work and his silicosis.

The carrier points to certain medical records of Dr. H, who from May 1994 into March 2000 treated the claimant for various chest and lung symptoms and who then referred him to pulmonary specialists, and contends that the more reasonable inference for the hearing officer to draw from this evidence was that the claimant knew or should have known that his silicosis was caused by his work on several dates earlier than _____, the date inferred by the hearing officer. Section 408.007 provides for the date of injury in occupational disease injuries. Further, the carrier contends that any one of those earlier dates would result in the claimant's _____, notice of his injury to the employer not being timely. See Sections 409.001 and 409.002. However, the hearing officer relied on the _____, record of Dr. M, a pulmonologist, reflecting that Dr. M advised the claimant on that date of the relationship between his silicosis and his job. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). While the hearing officer could, based on the evidence, find an earlier date of injury, we cannot say that the challenged findings are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge