

APPEAL NO. 012293
FILED NOVEMBER 5, 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 August 29, 2001. The record closed on September 10, 2001. With regard to the four issues before her, the hearing officer determined that the appellant (claimant) had not sustained a compensable occupational disease (repetitive trauma); that the date of the alleged injury is _____; that the respondent (carrier) is relieved of liability because of the claimant's failure to timely notify her employer of the alleged injury; and that the claimant did not have disability. The date-of-injury determination has not been appealed and has become final pursuant to Section 410.169.

The claimant appeals the other issues, contending that the hearing officer erred in granting a continuance in order for the carrier to obtain two statements; that the hearing officer erred in not finding a compensable bilateral carpal tunnel syndrome (CTS) injury; and that the hearing officer erred in not making findings on good cause for failing to give timely notice. The claimant also appealed the disability issue. The carrier responded, generally urging affirmance without addressing the allegations raised in the claimant's appeal.

DECISION

Affirmed.

The claimant was employed part time as a cashier in a second job by a large retailer (employer). The claimant's primary job was working as a teacher's aide. The claimant worked for the employer from about 5:00 p.m. to 10:00 or 11:00 p.m. five days a week. The claimant testified that around Thanksgiving of _____ (later refined to be _____), she began having pain, numbness, and tingling in her hands and wrists; she stated that she was aware that the pain was due to her work with the employer. The claimant's testimony established the unappealed date of injury of _____. The claimant said that she reported the injury to Mr. AH, a person she believed was a supervisor. There was considerable dispute whether Mr. AH was in fact a supervisor. The claimant, at the time, in _____, was pregnant, and in _____ took a leave of absence for the birth of her child. The claimant was released to return to work after the birth of her child on _____, and claims disability from that date.

In evidence is an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated June 12, 2000, claiming a date of injury of _____ which the claimant said was the date she saw a doctor who diagnosed her bilateral CTS); that Mr. KP was her supervisor; and that there were no witnesses. Another amended TWCC-41, dated May 31, 2001, gives a date of injury as _____, lists "Nell" (later identified as Ms. NE) as the supervisor and lists Mr. AH as a witness.

In evidence is a handwritten statement dated January 21, 2001, from Mr. AH stating that the claimant had told him that she had "hurt her hands lifting and Scanning" around "Thanksgiving <__." The statement is signed, and underneath the signature is "(former C.S.M.)." Testimony developed that CSM meant customer service manager. Ms. SD, the employer's claims coordinator, testified that Mr. AH had never had the title of CSM, was not a manager or supervisor, and was a cashier just like the claimant. Ms. SD gave testimony as to who were managers and supervisors and who was authorized to receive reports of injury. Ms. NE was mentioned as was Ms. RO. At the end of the CCH, the carrier requested a continuance to obtain statements from Ms. NE and Ms. RO. Over the claimant's objection, the hearing officer left the record open and allowed the carrier to obtain statements from Ms. NE and Ms. RO, stating that she wanted to know what their job positions were; whether the claimant had reported a work-related injury to them; and what Mr. AH's position was. In evidence are statements saying that Ms. RO was a customer service manager, that Ms. NE was personnel manager, that the claimant had not reported an injury to them, and that Mr. AH was a cashier and "never a customer service manager." Ms. SD contends that the employer did not receive notice of the claimant's injury until _____. The hearing officer found that the claimant gave notice of the injury on _____.

The medical evidence supports that the claimant has CTS. Dr. E, the claimant's family doctor, states that the wrist disorder "could be work related if she uses her hands frequently while at work." Other doctors make no reference to the fact that the claimant's job with the employer is a part-time second job, and one report simply says that the "injury [was] sustained while employed at [employer] on _____." Dr. P, the carrier's required medical examination doctor, does note that the claimant was a part-time cashier and that some persons "may be pre-disposed to develop [CTS] . . . following limited repetitive activity." The claimant testified about her duties scanning items, straightening shelves, and that she has particular problems scanning heavier items from the electronics department.

There is very little discussion about the medical aspects of this case. The hearing officer discusses various procedural matters and comments:

With the muddle of contradictory evidence that the Claimant presented, *without considering the evidence presented by the Carrier*, the Claimant has failed to meet her burden of proof concerning the timely reporting of an injury. If there were an occupational disease sustained, it was sustained in _____, but it was not reported until _____. [This is at odds with the hearing officer's Finding of Fact No. 6.] The Claimant was just not a believable witness. The evidence is insufficient to find that the Claimant sustained an injury; that she timely reported the injury; or that she had disability. [Emphasis in the original.]

The hearing officer was obviously not persuaded by the claimant's testimony, and we do not perceive the hearing officer's decision to leave the record open for the additional

statements to be reversible error, particularly in view of the fact that the hearing officer commented that she made her decision based on the claimant's evidence "without considering the evidence presented by the Carrier." In any event, the hearing officer allowed the claimant to file a rebuttal and both parties to respond in written closing argument.

In that we are affirming the hearing officer's decision that the claimant had not sustained a compensable injury, the claimant, by definition, cannot have disability. Section 401.011(16).

We have reviewed the complained-of determinations and conclude that the hearing officer's decision is supported by the evidence. 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 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent of service of process is

**C T CORPORATION SYSTEM
800 BRAZOS
AUSTIN, TEXAS 78401.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge