

APPEAL NO. 012446
FILED NOVEMBER 13, 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 September 11, 2001. The hearing officer determined that the appellant/cross-respondent (claimant) sustained a repetitive trauma injury while in the course and scope of her employment; that the date the claimant knew or should have known that her condition may have been related to her work was _____; and that the claimant did not timely report her injury to her employer and, consequently, the respondent/cross-appellant (carrier) is relieved from liability, the injury is not compensable, and the claimant did not have disability. On appeal, the claimant disputes the determinations relating to the date of injury and timely reporting the injury and the effects of those determinations on compensability of the injury and disability. In its response, the carrier urges that those determinations disputed by the claimant be affirmed. In its cross-appeal, the carrier requests that we reverse the hearing officer's determinations that the claimant sustained a compensable injury and had disability. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Affirmed.

Section 401.011(34) defines occupational disease as including a repetitive trauma injury. A "repetitive trauma injury" means "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." Section 401.011(36). The date of injury for an occupational disease is the date the employee knew or should have known that the disease may be related to the employment. Section 408.007. Whether the claimant's activities were sufficiently repetitive to cause bilateral carpal tunnel syndrome (BCTS) is a factual determination for the hearing officer to resolve. Similarly, the date of injury, when the claimant knew or should have known that the BCTS may be related to the employment, and whether the claimant gave timely notice to her employer of the injury are also factual questions for the hearing officer to resolve. Section 409.001 requires that an employee, or a person acting on the employee's behalf, shall notify the employer of an injury not later than the 30th day after the date on which 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.

The carrier disputes on appeal that the claimant sustained a compensable repetitive trauma injury and had disability. On the contrary, although the hearing officer found that the claimant sustained a repetitive trauma injury while in the course and scope of her employment and was unable to obtain or retain employment at wages equivalent to her preinjury wage from June 8, 2001, through the date of the CCH, the hearing officer also

found that the claimant did not timely report her injury to the employer, and, therefore, the injury is not compensable and the claimant did not have disability. If the carrier intends to appeal the hearing officer's factual findings of injury and inability to obtain and retain employment, there was sufficient evidence to support these findings.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), 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)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The hearing officer's determinations that the claimant sustained a repetitive trauma injury while in the course and scope of her employment; that the date of injury was _____; that she did not timely report the injury to her employer; and that she was unable to obtain or retain employment at wages equivalent to her preinjury wage from June 8, 2001, through the date of the CCH are sufficiently supported by the evidence. Finding sufficient evidence to support the determination of the hearing officer that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001, we perceive no error in the conclusion that the claimant's injury is not compensable and that there was no resulting disability. As an appellate-reviewing tribunal, we will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (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 carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, STE. 750
COMMODORE 1
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge