

APPEAL NO. 012462
FILED DECEMBER 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 September 24, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the respondent (self-insured) is relieved of liability under Section 409.002 because the claimant failed to timely notify the self-insured of her claimed injury under Section 409.001; and that the self-insured is relieved of liability under Section 409.004 because the claimant did not file a claim for compensation with the Texas Workers' Compensation Commission (Commission) not later than one year after the date of the injury as required by Section 409.003.

DECISION

The hearing officer's decision is affirmed.

COMPENSABLE INJURY ISSUE

Section 401.011(10) defines the term "compensable injury." The claimant had the burden to prove that she was injured in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The claimant testified that she injured her back lifting bags of books at work on _____. Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

TIMELY NOTICE ISSUE

Section 409.001(a) requires that notice of injury must be given to the employer not later than the 30th day after the date the injury occurs. The claimant's testimony reflected that she gave timely notice of her injury. However, the self-insured's witnesses testified that timely notice of injury was not given. The hearing officer resolved the conflicts in the evidence and determined that the claimant did not timely notify the self-insured of her claimed injury. The claimant did not assert good cause for failing to timely notify the self-insured of her claimed injury. The hearing officer's determination on the timely notice issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

TIMELY CLAIM ISSUE

Section 409.003 requires that a claim for compensation be filed with the Commission not later than one year after the date on which the injury occurred. The parties stipulated that the claimed date of injury was _____. Both of the claims for compensation that are in evidence are dated several months after the one-year filing period expired for the claimed date of injury of _____, and both refer to dates of injury other than the claimed date of injury. The claimant did not assert good cause for failing to timely file a claim for compensation. The hearing officer's decision that the claimant did not file a claim for compensation not later than one year after the date of injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. *Cain, supra*.

OTHER MATTERS

The claimant's complaint about the adequacy of the representation provided by her attorney does not present grounds for reversal of the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 992125, decided November 5, 1999; Texas Workers' Compensation Commission Appeal No. 010629, decided April 27, 2001.

The true corporate name of the insurance carrier is **SELF-INSURED, THROUGH THE TEXAS ASSOCIATION OF COUNTIES WORKERS' COMPENSATION SELF-INSURANCE FUND** and the name and address of its registered agent for service of process is

**SAM SEALE, EXECUTIVE DIRECTOR
TEXAS ASSOCIATION OF COUNTIES
1204 SAN ANTONIO
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge