

APPEAL NO. 012489  
FILED NOVEMBER 19, 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 September 11, 2001. She determined that the appellant (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 \_\_\_\_\_; that the claimant did not timely report her injury to her employer and, consequently, the respondent (carrier) is relieved from liability and the injury is not compensable; and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy. On appeal, the claimant disputes the determinations relating to the date of injury and compensability of the injury. In its response, the carrier contends that the claimant's appeal should be dismissed because it was not filed timely. Alternatively, the carrier urges affirmance and, although it did not file an appeal, also urges that the finding that the claimant sustained a repetitive trauma injury while in the course and scope of her employment is not supported by the evidence.

DECISION

Affirmed.

The carrier contends that the claimant's request for review was not timely filed. We do not agree. Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Commission records indicate that the hearing officer's decision and order was mailed to the claimant on September 24, 2001, and was deemed received by the claimant on September 29, 2001. See Rule 102.5(d). Under Section 410.202(a), 15 days from the claimant's deemed date of receipt of the decision would have been October 19, 2001. The claimant's appeal is postmarked October 15, 2001, and was received by the Commission on October 17, 2001. Therefore, the appeal was timely.

Section 401.011(34) defines occupational disease as including repetitive trauma injuries. 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 carpal tunnel syndrome (CTS) 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 CTS 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.

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 \_\_\_\_\_; and that the claimant did not report the injury to her employer timely are sufficiently supported by the evidence. 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 claimant expresses in her appeal that she does not understand the basis for the hearing officer's determination that she did not sustain a compensable repetitive trauma injury. We will attempt to clarify this issue. 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 of the injury. 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. Therefore, while the hearing officer found that the claimant sustained a repetitive trauma injury while in the course and scope of her employment, this injury was determined not to be compensable because of the claimant's failure to timely notify her employer. 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 injury is not compensable.

The decision and order of the hearing officer are affirmed.

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

**JIM ADAMS  
450 GEARS ROAD, SUITE 500  
HOUSTON, TEXAS 77067.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Robert W. Potts  
Appeals Judge