APPEAL NO. 012581
FILED NOVEMBER 30, 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 15, 2001. The hearing officer determined that (1) the appellant (claimant) did not sustain a compensable repetitive trauma injury with a date of injury of _____; (2) the claimant failed to timely report an injury to her employer without good cause, thereby relieving the respondent (self-insured) from liability pursuant to Section 409.002; and (3) the claimant did not have disability. The claimant appeals the determinations on sufficiency grounds. The self-insured urges affirmance.

DECISION

Affirmed.

The claimant was employed as a music and voice teacher for over 10 years. In an unappealed finding, the hearing officer found that the claimant had had "chronic, recurrent problems with her vocal cords for over ten years, due to overuse/misuse of her voice." In a prior CCH, in 2000, another hearing officer, had determined that the claimant had sustained a repetitive voice injury at work with a date of injury of _____, but that the claimant had not timely reported her injury to the self-insured. That decision was affirmed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 010559, decided April 20, 2001. As the hearing officer in the present case notes, after the 1999 injury, the claimant "returned to work with improved voice quality in April 2000."

The claimant, in this case, contends that she developed a new injury in "_____" when her voice quality deteriorated. The hearing officer found that in _____ and _____, the claimant "had a continuation and worsening" of her _____ injury; that on _____, the claimant knew her "new injury" may be related to her employment; and that she did not report the claimed new injury to the employer until _____.

COMPENSABLE INJURY

The Appeals Panel has noted that whether a claimant sustained a new injury or merely suffered a continuation of an original injury is normally a question of fact to be determined by the hearing officer, and that to be considered a new injury there must be evidence that an injury, as defined in the 1989 Act, has occurred. Texas Workers' Compensation Commission Appeal No. 000112, decided March 6, 2000. There was conflicting medical evidence presented with regard to this issue. 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 including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot

conclude that the hearing officer's determination is 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).

NOTICE OF INJURY

Section 409.001(a)(2) provides, in relevant part, 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 employee knew or should have known that the injury may be related to the employment. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier of liability, unless the employer or carrier has actual knowledge of the injury, good cause exists, or the claim is not contested. Section 409.002. Whether the claimant timely notified her employer of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000150, decided March 10, 2000. The hearing officer could believe the carrier's evidence over the claimant's testimony and conclude that the claimant did not timely notify her employer of the new claimed injury. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

DISABILITY

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have a disability.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

BARRON RISK MANAGEMENT
3445 EXECUTIVE CENTER DRIVE, SUITE 201
AUSTIN, TEXAS 78731.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge