

APPEAL NO. 013101
FILED FEBRUARY 5, 2002

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 November 13, 2001. The hearing officer determined the following:

1. The respondent's (claimant) date of injury for the bilateral carpal tunnel syndrome (CTS) is _____;
2. The claimant sustained a compensable bilateral CTS injury, that occurred as a result of repetitious traumatic activities in the form of an occupational disease, that arose out of and in the course and scope of employment with the employer;
3. The claimant failed to timely report her bilateral CTS injury to the employer;
4. The claimant did not have good cause for failing to timely report her bilateral CTS injury;
5. The appellant (carrier) did not specifically contest compensability of the claimant's bilateral CTS injury on the issue of the claimant's failure to timely notify the employer of her claimed injury, pursuant to Section 409.022;
6. The carrier is not relieved of liability under Section 409.002 because the carrier waived its right to raise the defense of the claimant's failure to timely notify the employer of her claimed injury, pursuant to Section 409.001; and
7. The claimant had disability beginning on May 25, 2001, and continuing through the present date of this hearing on November 13, 2001, due to the compensable bilateral CTS injury.

The carrier appealed, arguing that the hearing officer's determinations regarding compensability, disability, and the carrier's failure to contest compensability are against the great weight and preponderance of the evidence. The claimant did not file a response.

DECISION

Affirmed.

The claimant testified that she was employed as a forklift operator for the employer. The claimant stated that in about _____, she began to have pain in her wrists

that she attributed to long work hours. On December 26, 2000, the claimant notified her area manager that she had pain in her wrists and she took a two-week vacation to rest her hands and wrists. The claimant stated that her hands and wrists improved and after her vacation, she continued to work as a forklift operator for several months. On May 18, 2001, the claimant sought medical treatment at a medical clinic for pain and numbness to her wrists. The claimant was diagnosed with bilateral CTS on May 18, 2001, and she was released to light duty that same day. The claimant testified that she knew she had a work-related injury on the day that she was diagnosed with bilateral CTS. The claimant stated that she reported the repetitive motion injury in person to her area manager on May 18, 2001. The medical report in evidence dated June 1, 2001, show that Dr. D opined that "clearly when [claimant] does the type of job she is doing with a forklift, she relates a history of problems, when she stops doing that type of work, she has relief of symptoms." Also, Dr. D opined in his medical report that "it is more likely than not this individual's [CTS] at a minimum has been aggravated significantly by her job." Dr. D performed a left carpal tunnel release on June 8, 2001, and a right carpal tunnel release on June 25, 2001. Dr. D certified that the claimant reached maximum medical improvement on September 25, 2001, with a seven percent impairment rating. The claimant stated that she had been unable to work beginning May 25, 2001, and continuing through the date of the CCH.

The hearing officer did not err in determining that the claimant sustained a compensable injury in the form of bilateral CTS. The hearing officer was persuaded by the claimant's testimony and the medical reports in evidence that the claimant suffered a repetitive trauma injury to her hands and wrists while operating the forklift at work. The claimant testified that she noticed that her hands and wrists would stop hurting when she would stop operating the forklift. The evidence sufficiently supports the hearing officer's determination that the claimant suffered a repetitive trauma injury in the form of bilateral CTS on _____, due to repetitive traumatic activities while working for the employer.

The hearing officer did not err in determining that the claimant has disability due to the compensable bilateral CTS injury. The evidence sufficiently supports the hearing officer's determination that the claimant had not worked due to the repetitive trauma injury beginning May 25, 2001, and continuing through the date of the CCH.

The hearing officer did not err in determining that the carrier did not specifically contest compensability of the claimant's bilateral CTS injury and that therefore the carrier was limited to the defense it raised, which did not include failure to timely notify the employer. The Payment of Compensation or Notice of Refused/Dispute Claim (TWCC-21) in evidence shows that the carrier disputed the work-relatedness of the claimant's repetitive trauma injury, but did not dispute the claimant's failure to timely notify the employer until the benefit review conference. Absent a finding that such a defense was based on newly discovered evidence that could not reasonably have been discovered at an earlier date, the carrier was limited to the defenses set forth in its TWCC-21. Section 409.022(b).

It is the hearing officer, as the sole judge of the weight and credibility of the evidence

(Section 410.165(a)), who 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.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel 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 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 insurance 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
SUITE 750
COMMODORE I
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Judge