

APPEAL NO. 013152  
FILED JANUARY 30, 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 was held on December 4, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the date of injury under Section 408.007 is \_\_\_\_\_; that the claimant timely notified her employer of her claimed injury and thus the respondent (carrier) is not relieved of liability under Section 409.002; and that the claimant has not had disability. The claimant appealed the hearing officer's determinations that she did not sustain a compensable injury in the form of an occupational disease and that she has not had disability. The carrier responded, requesting affirmance. There is no appeal of the hearing officer's determinations regarding the date of injury and timely notice of the claimed injury to the employer.

DECISION

The hearing officer's decision is affirmed.

**OCCUPATIONAL DISEASE ISSUE**

An occupational disease includes a repetitive trauma injury. Section 401.011(34). The claimant claimed a compensable occupational disease in the form of a repetitive trauma injury to her left hand and wrist from performing her work activities. Section 401.011(36) defines a "repetitive trauma injury" as "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." The claimant had the burden to prove that she was injured during the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Conflicting evidence was presented on this issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's determination that the claimant did not sustain a compensable injury in the form of an occupational disease 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).

**DISABILITY ISSUE**

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The hearing officer did not err in determining that the claimant has not had disability because, without a compensable injury, the claimant would not have disability as defined by Section

401.011(16).

The hearing officer's decision and order 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 1  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Terri Kay Oliver  
Appeals Judge