

APPEAL NO. 013187
FILED FEBRUARY 7, 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 December 7, 2001. The hearing officer determined that the respondent (carrier) is relieved from liability under Section 409.002 because the appellant (claimant) failed to timely notify the employer pursuant to Section 409.001; that the date of injury is on or before _____; that because the carrier is relieved from liability under Section 409.002, the claimant did not sustain a compensable repetitive trauma injury; and that the claimant did not have disability. The claimant appealed the hearing officer's determinations regarding date of injury and timely reporting. The carrier filed a response, urging affirmance.

DECISION

Affirmed.

The claimant testified that in _____, while working for the employer, she sustained an injury to her left hand and that thereafter she developed carpal tunnel syndrome (CTS). The claimant stated that she also developed some symptoms to her right upper extremity in _____, but that those problems had resolved with physical therapy. On _____, when the claimant's treating doctor was examining her left upper extremity, he pressed her right arm and she felt pain immediately to her right hand and wrist. The claimant continued to work for the employer over the next few months and began experiencing pain, tingling, and numbness to her right hand and wrist. On December 27, 2000, the claimant was diagnosed with right CTS. The claimant reported the injury to her supervisor on January 1, 2001; however, she was told that all workers' compensation claims were on hold due to the employer closing its business within a few months. The claimant stated that she again reported her injury to her supervisor on January 12, 2001.

The hearing officer did not err in determining that the date of injury is on or before _____. The claimant testified that during a medical examination of her left upper extremity, she experienced pain to her right wrist. The hearing officer commented that the claimant "reasonably should have known her right upper extremity problems may have been work-related as soon as symptoms appeared" as the claimant had already had left CTS. In her transcribed statement, the claimant said that she knew about her condition in _____. The evidence sufficiently supports the hearing officer's decision that the claimant's date of injury is on or before _____.

The hearing officer did not err in determining that the claimant failed to timely notify her employer of her injury and that the carrier is relieved from liability under Section 409.002. Section 409.001 requires that an employee, or a person acting on the employee's behalf, shall notify the employer of an occupational disease 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 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. Whether, and, if so, when, notice is given is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93761, decided October 4, 1993. The hearing officer determined that the claimant did not report the claimed injury within 30 days and did not have good cause, and this decision is sufficiently supported.

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 **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
6600 E. CAMPUS CIRCLE DRIVE
SUITE 200
IRVING, TEXAS 75063.**

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge