APPEAL NO. 020053
FILED FEBRUARY 12, 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 November 30, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease, that there is no date of injury, and that the claimant does not have disability. The claimant appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. The respondent (carrier) filed a response, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury in the form of an occupational disease. An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. . . . The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). The hearing officer was not persuaded that the medical records in evidence established a causal relationship between the claimant's employment duties and the symptoms he began to experience in his upper extremities as early as 1997. 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)).

As to concluding that there was no date of injury, the hearing officer did make a factual finding as to the date that the claimant knew, or should have known, that his alleged injury may be related to his employment. This would provide sufficient factual evidence upon which to base a conclusion for a date of injury of any occupational disease pursuant to Section 408.007. Because of this, we cannot find error in a legal conclusion that in the absence of a compensable injury, there is no date of 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, as we are affirming that the claimant did not sustain a compensable injury, the hearing officer did not err in determining there was no date of injury.

The hearing officer did not err in determining that the claimant did not have 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 disability.

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

C.T. CORPORATION SYSTEMS
350 N. ST. PAUL
DALLAS, TEXAS 75201.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge