

APPEAL NO. 020075
FILED FEBRUARY 6, 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 10, 2001. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) did not sustain a compensable injury in the form of an occupational disease, that the claimant has not had disability, and that the claimant timely notified his employer of his claimed injury. The claimant appealed the hearing officer's determinations that he did not sustain a compensable injury in the form of an occupational disease and that he has not had disability. The respondent/cross-appellant (carrier) appealed the hearing officer's determination that the claimant gave timely notice of his claimed injury to his 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 from performing his 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 he was injured during the course and scope of his 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).

TIMELY NOTICE ISSUE

Section 409.001(a) provides that if an injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee 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. The hearing officer found that the claimant knew or should have known that his injury may be related to his employment on _____, and that the claimant's attorney provided notice of the claimant's claimed injury to the employer no later than _____, which was within the 30-day notice period. The hearing officer's determination on the notice issue 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, supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **EMPLOYERS GENERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT RAMSOWER
1601 EL STREET, SUITE 1600
DALLAS, TEXAS 75201**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge