

APPEAL NO. 020129
FILED FEBRUARY 11, 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 26, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable repetitive trauma injury; that the date of injury was _____; that the respondent (self-insured) is relieved of liability under Section 409.002 because the claimant failed to timely notify her employer of her claimed injury under Section 409.001; and that the claimant has not had disability. The claimant appealed and the self-insured responded.

DECISION

The hearing officer's decision is affirmed.

REPETITIVE TRAUMA INJURY ISSUE

An occupational disease includes a repetitive trauma injury. Section 401.011(34). The claimant claimed a compensable repetitive trauma injury 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 repetitive trauma injury 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).

DATE OF INJURY ISSUE

Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. The hearing officer resolved the conflicts in the evidence by determining that the date of injury under Section 408.007 was _____. The hearing officer's determination on this 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.

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 determined that the claimant notified her employer of a claimed work-related injury on or about _____, and that a reasonably prudent person in the same or similar circumstances would have notified the employer prior to that time. The hearing officer's determination as to the date notice of injury was given to the employer 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*. With a date of injury under Section 408.007 of _____, and notice of injury having been given on _____, the hearing officer did not err in determining that the claimant failed to timely notify her employer of her claimed injury under Section 409.001.

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 **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
THE STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Robert W. Potts
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Terri Kay Oliver
Appeals Judge