

APPEAL NO. 020623
FILED APRIL 17, 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 February 5, 2002. The disputed issues at the CCH were whether the appellant (claimant) sustained a compensable repetitive trauma injury on _____, and whether the claimant had disability as a result of that claimed injury. The hearing officer resolved the disputed issues by deciding that the claimant did not sustain a compensable repetitive trauma injury on _____, and that the claimant has not had disability. The claimant appealed and the respondent (carrier) responded.

DECISION

As reformed herein, the hearing officer's decision is affirmed.

The claimant claimed a repetitive trauma injury to her wrists in the form of bilateral carpal tunnel syndrome (CTS) and a left elbow tear from performing her work activities as a delivery driver. 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 sustained a repetitive trauma injury during the course and scope of her employment. Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. Civ. App.-Houston [14th Dist.], 1985, writ ref'd, n.r.e.). The trier of fact may believe that a claimant has an injury, but disbelieve that the injury occurred as the result of work activities as claimed by the claimant. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Conflicting evidence was presented at the CCH. 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 made the following findings of fact, conclusions of law, and Decision and Order:

FINDINGS OF FACT

2. The claimant did not sustain an injury to any part of her body in the course and scope of employment on _____.
3. The claimant was not unable to obtain and retain employment at wages equivalent to her wage of _____, from August 8, 2001, to the date of the hearing on February 5, 2002, as a result of any alleged injury of _____.

CONCLUSIONS OF LAW

3. The claimant did not sustain a compensable repetitive trauma injury on _____.
4. The claimant did not have disability.

DECISION AND ORDER

The claimant did not sustain a compensable repetitive trauma injury on _____. The claimant did not have disability. The carrier is not liable for benefits and it is so ordered.

The claimant states that she has two claims; one for the repetitive trauma injury to her wrists and elbow, and another for a back injury. The claimant indicates that she has not yet had a hearing on her back injury claim. Apparently, both claims have the same date of injury. The claimant contends that the Texas Workers' Compensation Commission (Commission) made an error in numbering her claims and that the hearing officer made a decision on the wrong claim. The claimant contends that the hearing officer's decision in the instant case will jeopardize her back injury claim, which has not yet been heard. The Commission's records reflect that (Docket No. 1), which is shown on the benefit review conference report wherein the claimant's claim of a repetitive trauma injury to her wrists and left elbow is set out, was converted to (Docket No. 2), which is the docket number listed on the hearing officer's decision. Consequently, we do not agree that the hearing officer made a decision on the wrong claim. Although there was evidence of back complaints introduced by both parties, in addition to the evidence of CTS and the left elbow condition, the hearing officer states in her decision that the claimant contended that she has bilateral CTS and an injury to her left elbow as a result of her job as a van driver for the employer, and also notes that the claimant was not asserting a back injury. Commission records reflect that the claimant has a separate claim number for a back injury. It is not clear that the parties made the hearing officer aware of the existence of the separate back injury claim, although in closing argument the carrier noted that the claimant's back was not being dealt with at the CCH.

Because the CCH of February 5, 2002, involved only the claim of a repetitive trauma injury to the wrists and left elbow, and because there appears to be a pending back injury claim that may have the same date of injury as the wrists and elbow claim, we believe that Findings of Fact Nos. 2 and 3, Conclusions of Law Nos. 3 and 4, and the hearing officer's Decision and Order should be reformed to state as follows so as not to implicate the pending back injury claim:

FINDINGS OF FACT

2. The claimant did not sustain an injury to her wrists or left elbow in the course and scope of her employment with a date of injury of _____.
3. The claimant was not unable to obtain and retain employment at wages equivalent to her wage of _____, from August 8, 2001, to the date of the hearing on February 5, 2002, as a result of the alleged injury of _____, to her wrists and left elbow.

CONCLUSIONS OF LAW

3. The claimant did not sustain a compensable repetitive trauma injury to her wrists and left elbow with a date of injury of _____.
4. The claimant has not had disability as a result of her claimed repetitive trauma injury to her wrists and left elbow.

DECISION AND ORDER

The claimant did not sustain a compensable repetitive trauma injury to her wrists and left elbow with a date of injury of _____. The claimant has not had disability as a result of her claimed repetitive trauma injury to her wrists and left elbow. The carrier is not liable for benefits for the claimant's claim of a repetitive trauma injury to her wrists and left elbow and it is so ordered.

As reformed, we conclude that the hearing officer's findings of fact, conclusions of law, and decision are supported by sufficient evidence and are 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). Without a compensable repetitive trauma injury to her wrists and left elbow, the claimant would not have disability, as defined by Section 401.011(16), as a result of that claimed injury.

While it appears that the number identified as the insurance carrier claim number on the cover letter that was sent with the hearing officer's decision is the carrier's number for the back injury claim, that does not affect the hearing officer's decision, because the hearing officer noted in her decision that the claimant was contending that she sustained a repetitive trauma injury to her wrists and left elbow, and we are reforming the hearing officer's decision to limit it to that claim.

The hearing officer's comments in her decision with regard to her observations at the CCH were apparently made in the context of evaluating the testimonial evidence

concerning the extent of an off-work activity that was brought out at the CCH, and, as such, we do not believe that those comments constitute reversible error.

The claimant is correct in noting that the hearing officer listed in her decision only the first 7 of the claimant's 11 exhibits that were admitted into evidence. We believe that the hearing officer's failure to list the last 4 exhibits was an inadvertent oversight and does not affect the outcome of the case, especially in light of the fact that the hearing officer specifically mentions one of those exhibits, the left elbow MRI, in her discussion of the evidence. Moreover, another exhibit, the claim for compensation, is the same as a carrier's exhibit, and the two other exhibits, the claimant's calendar with notations and the copies of pages from the Federal Register, were discussed at the CCH. In addition, there is a notation on the claimant's exhibit list, presumably made by the hearing officer, that all 11 of the claimant's exhibits were admitted. Despite the error in listing the claimant's exhibits, under the circumstances presented, we have no reason to believe that the hearing officer did not consider all of the evidence that was admitted at the CCH.

The hearing officer's decision and order, as reformed herein, are affirmed.

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

**CT CORPORATION SYSTEMS
350 N. ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge