

APPEAL NO. 020888
FILED MAY 30, 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 March 4, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a repetitive trauma injury with a date of injury of _____; that the claimant timely notified his employer of his injury; and that the claimant had disability from _____, through May 20, 2001, and from June 28, 2001, through the date of the CCH on March 4, 2002. The appellant (carrier) appealed and the claimant responded.

DECISION

The hearing officer's decision is affirmed.

Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36) 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." Section 409.001(a) provides that, for an occupational disease, notice of injury must be given to the employer 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. 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 claimant had the burden to prove that he sustained a repetitive trauma injury. 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 claimant also had the burden to prove that he timely notified his employer of his injury and that he had disability. Conflicting evidence was presented at the CCH on the disputed issues. 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. We conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and that they 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).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
COMMODORE 1
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge