APPEAL NO. 021236
FILED JUNE 21, 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 April 18, 2002. The hearing officer determined that the date of injury pursuant to Section 408.007, the date the employee knew or should have known the disease may be related to the employment, is on or about _____; that the appellant (claimant) did not sustain a compensable repetitive trauma injury; that the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001; that the injury does not extend to include an injury to the left elbow; and that the claimant did not have disability. The claimant appeals, arguing that the hearing officer erred in her determinations on the injury, disability, and timely notification issues. The carrier files a response urging affirmance. The extent-of-injury determination was not appealed by either party and is, therefore, final. Section 410.169.

DECISION

Affirmed.

The claimant had the burden to prove that the claimed injury arose out of and in the course and scope of her employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. 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)). The hearing officer was not persuaded by the claimant's testimony that she sustained a repetitive trauma injury in the course and scope of her employment. 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 (Tex. 1986).

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.

Section 409.001(a)(1) provides, in relevant part, that an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier of liability, unless the employer or carrier has actual knowledge of the injury, good cause exists, or the claim is not contested. Section 409.002. Whether the claimant timely notified her

employer of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000150, decided March 10, 2000. The hearing officer found that the claimant had good cause for not reporting a work-related injury to her employer until October 24, 2001, but that she did not have good cause for not reporting a work-related injury after October 24, 2001. (The hearing officer found that the claimant reported a work-related injury on December 20, 2001.) 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, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **U. S. SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

BENJAMIN WILCOX
U.S. SPECIALTY INSURANCE COMPANY
13403 NORTHWEST FREEWAY
HOUSTON, TEXAS 77040.

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge