

APPEAL NO. 022192
FILED OCTOBER 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on August 7, 2002, the hearing officer, resolved the four disputed issues by concluding that the respondent (claimant) sustained a compensable injury in the form of an occupational disease (hearing loss); that the date of the claimed injury is _____; that the appellant (carrier) is not relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer under Section 409.001; and that the carrier has not waived the right to contest the compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021. The carrier appeals the hearing officer's determinations of the injury, date of injury, and timely notice of injury issues, asserting that the hearing officer, in finding a date of injury of _____, has essentially decided a prior claim of the claimant which he had not pursued and which was not the subject of this proceeding; that the claimant did not sustain damage or harm to the physical structure of his body; that the hearing officer erred in finding that the claimant gave notice of his injury to the employer within 30 days of _____; and that the employer had actual knowledge of the claimed injury. The claimant's response urges the sufficiency of the evidence to support the challenged findings and conclusions. The hearing officer's determination of the carrier waiver issue has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that he has worked as a ground equipment mechanic on the flight line at an airfield where jet aircraft are flown since 1969, and for the current employer since 1994; that since 1970, the employer has arranged for annual tests of his hearing; that after the 1999 exam he was told he had a hearing loss, was retested, and was sent to a hearing specialist, Dr. O, who examined him on April 19, 1999, and said he did not yet need hearing aids; that after the employer's 2000 exam, he was retested and again sent to Dr. O who examined him on October 23, 2000, and advised that he still had no significant hearing loss; and that after the employer's 2001 exam he was retested, advised he had a significant hearing loss, and was sent to Dr. B, who examined him on January 4, 2002, and prescribed hearing aids. The claimant further testified that after the 1999 exam by Dr. O, the employer apparently filed a workers' compensation claim on his behalf with the date of injury stated as _____; that whatever documents he signed in connection with that claim were signed at the direction of the employer; and that nothing ever came of that claim. The records indicate that the claimant lost no time from work following the filing of that claim. A Texas Workers' Compensation Commission (Commission) claims record check dated July 15, 2002, and addressed to the carrier, reflects that two claim files were

established by the Commission, TWCC No. 1 with an injury date of “(date of injury for TWCC No. 1),” which is the claim number assigned to the claim which is the subject of this proceeding, and TWCC No. 2 with an injury date of “(date of injury for TWCC No. 2).”

The claimant acknowledged that in April 1999 he suspected that his work environment was diminishing his hearing and that his hearing definitely worsened after that date. The claimant contended throughout the hearing that his date of injury was (alleged injury), and the Employer's First Report of injury or Illness (TWCC-1) in evidence reflects that the claimant reported his hearing loss injury on November 28, 2001. The carrier stated in its closing argument that the date of injury issue was the most difficult issue in the case, given the several possible dates including the dates of Dr. O's exams, the _____, date on the previously filed claim form, the date of Dr. B's exam, and so on, and that this made it “hard for” the claimant to be arguing for a (alleged injury), date. In two reports, Dr. B related the claimant's hearing loss to his employment.

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 (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We are satisfied that the challenged factual determinations are 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, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The carrier contends that the hearing officer erred in adopting the date of _____, as the date of the injury because that date was the claimed injury date on the claimant's prior hearing loss claim, a claim not before the hearing officer in this case. We find no merit in this contention, raised for the first time on appeal. We are not aware of any basis for concluding that the hearing officer could not find a date of injury which appeared on an earlier claim which was apparently not pursued.

The decision and order of the hearing officer 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.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge