

APPEAL NO. 022323
FILED OCTOBER 24, 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 August 16, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury; that the date of injury is _____; that the appellant (carrier) is not relieved from liability under Section 409.002 because the claimant timely notified her employer pursuant to Section 409.001; and that the claimant had disability from March 15, 2002, and continuing through the date of the hearing. The carrier appealed on sufficiency of the evidence grounds. The file does not contain a response from the claimant. The hearing officer's determination that the carrier did specifically contest compensability on the issue of the claimant not sustaining an injury in the course and scope of her employment pursuant to Section 409.022 is unappealed and has become final. Section 410.169.

DECISION

We affirm the hearing officer's decision and order.

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 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).

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. Medical knowledge is not required of a lay person, see Bocanegra v. Aetna Life Insurance Company, 605 S.W.2d 848 (Tex. 1980). The hearing officer resolved the conflicts in the evidence by determining that the date of injury 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.

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 on or about March 15, 2002, which was within 30 days of the date the claimant knew or should have known that her injury may be related to her employment. 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. With a date of injury under Section 408.007 of _____, and notice of injury having been given on March 15, 2002, the hearing officer did not err in determining that the claimant timely notify her employer of her claimed injury under Section 409.001.

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 had disability from March 15, 2002, through the date of the hearing.

The decision and order of the hearing officer are affirmed.

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

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge