

APPEAL NO. 022338
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 resolved the disputed issues by deciding that the respondent (carrier) is relieved from liability under Section 409.002 because the appellant (claimant) failed to timely notify her employer pursuant to Section 409.001; that the date of injury is _____; and that because the claimant did not sustain a compensable injury, the claimant did not have disability. The claimant appealed, arguing that the hearing officer's determinations were in error. The carrier responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained damage to the physical structure of her body occurring as a result of repetitious, physically traumatic activities that occurred over time and arose out of and in the course and scope of employment.

An occupational disease includes a repetitive trauma injury. Section 401.011(34). 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. The claimant contends that the date of injury was (alleged date of injury). The hearing officer determined that the claimant knew or should have known that her injury may be related to her employment on or about _____, and that the date of injury was, therefore, _____. Conflicting evidence was presented on this issue. We conclude that the hearing officer's determination on the date of 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). The hearing officer's determination on the date of injury is affirmed.

Section 409.001(a) provides that, for 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 claimant contends and the hearing officer found that she gave the employer notice of the claimed injury on (alleged date of injury). The date of injury was determined to be _____, therefore, the hearing officer concluded that the carrier is relieved of liability under Section 409.002 because the claimant failed to timely notify her employer of her injury under Section 409.001. We conclude that the hearing officer's determination that the claimant failed to timely notify her employer of her 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, *supra*. The hearing officer's determination on the timely notice issue is affirmed.

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." Because the claimant did not timely notify her employer of her injury, the claimant did not have a compensable injury as defined by Section 401.011(10), and thus the hearing officer did not err in determining that the claimant has not had disability as defined by Section 401.011(16). The hearing officer's determination that the claimant has not had disability is affirmed. See Texas Workers' Compensation Commission Appeal No. 011685, decided August 24, 2001.

We affirm the decision and order of the hearing officer.

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 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge