

APPEAL NO. 022343
FILED NOVEMBER 7, 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 7, 2002, with the record closing August 23, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury with a date of injury of _____, and that she had disability from October 24, 2001, through January 28, 2002. The appellant (carrier) contends that there is no evidence to support these determinations and that the hearing officer abused his discretion by not adding two issues as requested by the carrier during the hearing. The appeal file contains no response from the claimant.

DECISION

We affirm.

The hearing officer did not abuse his discretion by failing to include the two issues requested by the carrier during the hearing. Specifically, the carrier requested that the following additional issues be considered by the hearing officer: (1) what is the date of injury? and (2) did the claimant give timely notice of the injury to her employer? In response to this request, the hearing officer informed the attorney for the carrier that he would reserve ruling on the oral motion and that the carrier should continue to develop the record with regard to the requested issues. There is no indication that the hearing officer ever ruled on the carrier's oral motion to add the issues, however, the carrier did not reurge its motion prior to the closing of the hearing. See Texas Workers' Compensation Commission Appeal No. 941288, decided November 8, 1994. Because the hearing officer had indicated that he would delay ruling on the motion, it was incumbent upon the carrier to reurge the motion and it waived any possible error by failing to do so.

The claimant had the burden to prove that she sustained an injury in the course and scope of her employment and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. The hearing officer determined that the claimant sustained a compensable repetitive trauma injury "on" _____, and that she had disability from October 24, 2001, through January 28, 2002. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier 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 findings of fact in this regard are supported by sufficient evidence and 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 decision and order of the hearing officer is 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.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez
Appeals Judge