

APPEAL NO. 022489
FILED NOVEMBER 19, 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 (CCH) was held on August 22, 2002. The appellant (carrier) appeals the hearing officer's decision that the respondent (claimant) sustained a repetitive trauma injury with a date of injury of (subsequent date of injury); that the claimant timely notified his employer of his injury; and that the claimant has had disability from (date of subsequent injury), through the date of the CCH. The claimant responded.

DECISION

The hearing officer's decision that the claimant sustained a repetitive trauma injury and that he had disability as a result of a repetitive trauma injury is reversed and a decision is rendered that the claimant did not sustain a repetitive trauma injury and that he has not had disability as a result of a repetitive trauma injury. The hearing officer's determination on the timely notice issue is affirmed.

On August 22, 2002, a consolidated CCH was held with regard to the claimant's two claims; one for a back injury resulting from a specific incident while driving the employer's truck on (date of injury), and the other for a back injury resulting from repetitive trauma while driving the employer's trucks. We agree with the carrier's assertion that there was no stipulation that the benefit review conference reports were switched, therefore we strike stipulation 1.D. In Texas Workers' Compensation Commission Appeal No. 022410, decided November 6, 2002, the Appeals Panel affirmed the hearing officer's decision in favor of the claimant on the claim relating to the injury resulting from the specific incident occurring on (date of injury), when the truck the claimant was driving hit a pothole, causing the claimant to sustain an injury to his back (herniated disc/aggravation of degenerative condition). In that decision, the Appeals Panel affirmed the hearing officer's decision that the claimant sustained a compensable injury on (date of injury); that the claimant has had disability from December 27, 2001, through the date of the CCH; and that the carrier is not relieved of liability under Section 409.002 because the claimant had good cause for failing to notify his employer of his injury until he gave notice on (date of subsequent injury).

The hearing officer's decision presently under consideration involves disputed issues related to the repetitive trauma claim. Section 401.011(36) defines "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." While the claimant generally testified that he drove over rough roads while performing his job duties, which consisted of treating oil and gas wells with chemicals, the focus of his testimony was on the specific incident that occurred on (date of injury), when the truck he was driving hit the pothole, causing a truck spring to break and bounced him against the ceiling of the truck and back down

onto the truck seat. A doctor's opinion that some of the claimant's degenerative changes would be caused by repetitive trauma of driving over rough roads, is premised on her understanding that the trucks the claimant drove did not have appropriate air ride seats, for which there is a lack of evidence. That doctor also related the claimant's back condition to the specific incident in (date of injury), when the truck went into the pothole.

More importantly, in deciding that the claimant sustained a repetitive trauma injury, the hearing officer failed to make any finding regarding damage or harm to the physical structure of the claimant's body occurring as the result of repetitious, physically traumatic activities that occurred over time and arose out of and in the course and scope of employment. Instead, the only finding that the hearing officer makes relating to the cause of the claimant's back injury is his finding that the claimant suffered a severe jolt on (date of injury), when the truck hit the pothole and the claimant was thrown against the ceiling of the truck and down again. While that finding is supportive of the hearing officer's decision that the claimant sustained a compensable back injury on (date of injury), as the result of a specific incident, a determination the Appeals Panel affirmed in Appeal No. 022410, *supra*, it does not support the hearing officer's decision that the claimant sustained a repetitive trauma injury. We conclude that the hearing officer's decision that the claimant sustained a repetitive trauma injury is 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). Without a compensable repetitive trauma injury having been proven, the claimant would not have disability as a result of the claimed repetitive trauma injury. The claimant's disability from December 27, 2001, through the date of the CCH was due to the back injury that resulted from the specific work-related accident of (date of injury). See Appeal No. 022410, *supra*. The hearing officer's decision on the timely notice issue is supported by sufficient evidence and is affirmed.

We reverse the hearing officer's determinations that the claimant sustained a repetitive trauma injury and that he had disability as a result of the claimed repetitive trauma injury, and we render a decision that the claimant did not sustain a repetitive trauma injury and that he has not had disability resulting from a repetitive trauma injury. We affirm the hearing officer's determination on the issue of timely notice of injury based on his previous determination of good cause for failing to timely report the injury until (date of subsequent injury).

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.**

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Veronica Lopez
Appeals Judge