

APPEAL NO. 022917
FILED JANUARY 7, 2003

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 October 14, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable occupational disease injury; that the date of injury is _____; that the claimant gave timely notice of the injury to his employer; and that the claimant had disability from August 25, 2000, through January 7, 2001, and from February 16, 2001, through February 18, 2002. The appellant (carrier) appeals this decision. The appeal file contains no response from the claimant.

DECISION

Affirmed as reformed.

The hearing officer did not err in determining that the claimant sustained a compensable injury in the form of an occupational disease. The claimant had the burden to prove a causal connection between his employment and his reactive airway disease, by expert medical evidence to a reasonable medical probability. Texas Workers' Compensation Commission Appeal No. 93668, decided September 14, 1993. Conflicting evidence was presented at the hearing regarding this issue. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's compensability determination 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).

The date of injury for an occupational disease is the date the employee knew or should have known that the disease may be related to the employment. Section 408.007. The date upon which the claimant knew or should have known that his respiratory ailments may have been related to his employment is generally a question of fact for the hearing officer to resolve. The evidence supports the hearing officer's determinations that the date of injury is _____, and that the claimant reported the injury to his employer within 30 days thereafter.

The carrier's challenge to the hearing officer's disability determination is premised upon the success of its argument that the claimant did not sustain a compensable injury and, alternatively, that disability cannot predate the date of injury. Given our affirmance of the injury determination, we perceive no error in the hearing officer's determination that the claimant had resulting disability. With regard to the starting date of disability, Section 408.082(b) and (c) make clear that accrual of income

benefits payable for disability begins "after the date of injury." In Texas Workers' Compensation Commission Appeal No. 950521, decided May 18, 1995, we determined that temporary income benefits are to be paid for periods of disability beginning on the date of injury. However, employees who sustain occupational disease injuries may obtain medical benefits for treatment related to their compensable injury provided prior to the date determined to be the date of injury. Texas Workers' Compensation Commission Appeal No. 94991, decided September 7, 1994. Because the accrual of income benefits is a matter of statute, we reform the hearing officer's decision and order to reflect that the claimant had disability from August 25, 2000, through January 7, 2001, and from February 16, 2001, through February 18, 2002, however, accrual of income benefits did not begin until after the _____, date of injury.

The hearing officer's decision and order is affirmed as reformed.

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

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Chris Cowan
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge