

APPEAL NO. 022976
FILED JANUARY 10, 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 (CCH) was held on August 5, 2002. In Texas Workers' Compensation Commission Appeal No. 022210, decided October 10, 2002, we remanded this case for the hearing officer to make specific findings on a date of injury, applying the correct standard, and to make a finding of a specific date that notice of injury was given to the employer. On October 28, 2002, the hearing officer provided an opinion with such findings of fact. The hearing officer resolved the disputed issues by deciding the following: (1) that the appellant/cross-respondent (claimant) sustained a repetitive trauma injury as defined by the 1989 Act but that the claimant did not sustain a compensable repetitive trauma injury or occupational disease, because she failed to give timely notice of injury as required by Section 409.001 of the 1989 Act; (2) that because the claimant did not sustain a compensable injury she did not have disability; (3) that the date of injury is _____; and (4) the respondent/cross-appellant (carrier) is relieved from liability under Section 409.002 because the claimant failed to timely notify the employer pursuant to Section 409.001. Both parties have appealed. The claimant appeals the timely notice, compensable injury, and disability determinations arguing that the challenged determinations are against the great weight and preponderance of the evidence. The claimant does not appeal those findings indicating that she suffered an injury in the course and scope of employment or that the date of injury is _____. The carrier responds, arguing that the findings and conclusions disputed by the claimant are fully supported by the evidence in the record. The carrier appeals the findings that the claimant sustained an injury as a result of work activities and that due to the claimed injury, the claimant was unable to obtain or retain employment at wages equivalent to her preinjury wage from December 8, 2001, to the date of the CCH. The claimant responds, urging affirmance of the challenged findings.

DECISION

Affirmed.

The claimant claimed a repetitive trauma injury from performing her work activities as a "feeder/packer." 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 date of injury for a repetitive trauma injury (occupational disease) is the date the claimant knew or should have known that the disease "may be related to employment." Section 408.007. The date is somewhat of a "moving target," but need not be as early as the first symptoms nor as late as a definitive diagnosis. Texas Workers' Compensation Commission Appeal No. 970851, decided July 2, 1997. In Appeal No. 022210, *supra*, the hearing officer only found a date of injury of May 2001. The Appeals Panel directed the hearing officer to be more

specific in finding a date of injury rather than finding the whole month of May 2001 as the date of injury. The hearing officer in the remand decision found that the date of injury is _____. The claimant testified that on that date her symptoms got progressively worse and did not get better and that prior to that date her symptoms came and went. There is sufficient evidence to support the determination regarding date of injury.

Conflicting evidence was presented on the issues of whether the claimant sustained a repetitive trauma injury and whether she timely reported her injury under Section 409.001(a). The hearing officer resolved the conflicts in the evidence by determining that the claimant did sustain a repetitive trauma injury but that the claimant failed, without good cause, to timely report her injury to her employer and therefore did not sustain a compensable injury. 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.

There is sufficient evidence to support the finding that due to the claimed injury, the claimant was unable to obtain or retain employment at wages equivalent to her preinjury wage from December 8, 2001, through the date of the CCH. However, we affirm the determination that the claimant did not have disability because disability is by definition contingent upon a finding of a compensable injury. Section 401.011(16).

The hearing officer's decision 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).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge