

APPEAL NO. 023007
FILED JANUARY 21, 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 November 1, 2002. Resolving the disputed issues before him, the hearing officer decided that the respondent (claimant) did not sustain a compensable repetitive trauma injury, but did sustain a compensable single event injury on _____¹, and that she had disability from March 28 through April 1, from April 3 through May 5, and from May 11 through June 8. In addition, the hearing officer determined that the appellant (carrier) was not relieved from liability under Section 409.002, because the claimant timely notified her employer pursuant to Section 409.001. The carrier has appealed all of the determinations on a sufficiency of the evidence argument, and specifically contends that the hearing officer erred in finding a single event injury, when at dispute was a repetitive trauma injury, and in finding the date of injury to be the day after the date of injury propounded by the claimant. There is no response in the file from the claimant.

DECISION

Affirmed.

The hearing officer did not err in concluding that the claimant sustained a compensable single event injury on _____. While the claimant put forward as her date of injury (wrong date of injury), the dates were confused due to the claimant's shift beginning in the evening of one day and ending in the morning of another. With conflicting testimony on the alleged date of injury, the hearing officer decided that the claimant must have been injured on _____.

In addition, the hearing officer did not err in determining that the claimant sustained a single event, rather than a repetitive trauma, injury. Interpreting the evidence before him, the hearing officer concluded that the injury sustained by the claimant must have been a single event injury because even the claimant connected the injury to a discrete action, i.e., that of lifting a heavy tray. The carrier's argument that the contention of a single event injury having occurred was not before the hearing officer is unsupportable. The Appeals Panel has often times affirmed a hearing officer who, within his or her province, makes factual determinations based on his or her interpretation of the evidence in the record. Specifically, we affirm the hearing officer's determination that the compensable injury sustained by the claimant was a single event, and not a repetitive trauma, injury because the evidence supports the determination, and the dispute resolution proceedings of the Texas Workers' Compensation Commission are not governed by formal or strict rules of pleading. See Texas Workers' Compensation Commission Appeal No. 991429, decided August 19, 1999.

¹ All dates referenced are in the year 2002 unless otherwise indicated.

Section 410.165(a) provides that the 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 for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Based upon our review of the record, we find no error in the hearing officer's determination.

In addition, we find that the record supports the hearing officer's conclusion that the claimant had disability from March 28 to April 1, from April 3 to May 5, and from May 11 to June 8, as the hearing officer found that the claimant was unable to obtain or retain employment at wages equivalent to her preinjury wage during those time periods. See Section 401.011(16).

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **FIRST LIBERTY INSURANCE CORPORATION** 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.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge