

APPEAL NO. 023058
FILED JANUARY 30, 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 12, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury in the form of an occupational disease with a date of injury of _____; that the appellant (self-insured) is not relieved of liability under Section 409.002 because the claimant timely notified the self-insured of her injury pursuant to Section 409.001; that the claimant had disability as a result of the injury of _____, from March 27 through August 5, 2002; and that the self-insured waived its right to contest the claimed injury by not contesting the injury in accordance with Section 409.021. The self-insured appealed the hearing officer's decision on all of the disputed issues. No response was received from the claimant.

DECISION

As reformed herein, the hearing officer's decision is affirmed.

We reform Conclusions of Law Nos. 4 and 6 to reflect that the date of injury is _____, and not March 6, 2002. As reformed to reflect a _____, date of injury, Conclusions of Law Nos. 4 and 6 will be consistent with the hearing officer's findings of fact.

An occupational disease includes a repetitive trauma injury. Section 401.011(34). The date of injury for an occupational disease is defined in Section 408.007. The claimant claimed that she sustained a repetitive trauma injury as a result of performing her work activities for the self-insured and that the date of injury was _____. The claimant had the burden to prove that she sustained a repetitive trauma injury as defined by Section 401.011(36), that she had disability as defined by Section 401.011(16), and that she gave timely notice of injury as required by Section 409.001(a). Conflicting evidence was presented on the disputed issues of occupational disease, disability, and notice of 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. We conclude that the appealed findings and determinations on the issues of occupational disease, disability, and notice of injury 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).

In Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), the court held that under Sections 409.021 and 409.022 of the 1989 Act, a carrier that fails to begin benefit payments as required by the 1989 Act or send a notice of refusal to pay within seven days after it receives written notice of injury has not met the statutory

requisite to later contest compensability. A certified self-insurer is an insurance carrier pursuant to Section 401.011(27)(B)). In the instant case, the hearing officer determined that the self-insured received written notice of the claimant's claimed _____, injury on April 18, 2002, and, as stipulated by the parties, the self-insured filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) on May 30, 2002. The TWCC-21 contested compensability. The hearing officer concluded that the self-insured waived the right to contest the claimed injury by not contesting the injury in accordance with Section 409.021. Although there is conflicting evidence with regard to when the self-insured first received written notice of the _____, injury, we conclude that the hearing officer's determination is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer's decision and order, as reformed herein, are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

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

Robert W. Potts
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Chris Cowan
Appeals Judge