

APPEAL NO. 023096
FILED JANUARY 15, 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 November 14, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the date of injury under Section 408.007 was _____; that the claimant timely notified her employer of her injury; that the claimant has not had disability; and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy. The claimant appealed the hearing officer's determinations that she did not sustain a compensable injury in the form of an occupational disease and that she has not had disability. The respondent (carrier) responded, requesting affirmance of the appealed determinations. There is no appeal of the hearing officer's determinations on the issues of the date of injury, timely notice, or election of remedies.

DECISION

The hearing officer's decision is affirmed.

An occupational disease includes a repetitive trauma injury. Section 401.011(34). The claimant claimed that she sustained a repetitive trauma injury from performing her work activities and that she has had disability. The claimant had the burden to prove that she sustained a repetitive trauma injury as defined by Section 401.011(36) and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented with regard to the claimant's work activities. The hearing officer was not persuaded that the claimant's job as a photo retrieval clerk entailed repetitious, physically traumatic activities. In light of the testimony at the CCH regarding the claimant's actual work activities, the hearing officer could, and did, question the reliability of the opinion of the treating doctor regarding causation. 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 hearing officer's decision that the claimant did not sustain a compensable injury in the form of an occupational disease 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). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer's decision and order are affirmed.

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

**PRENTICE-HALL CORPORATE SYSTEMS, INC
800 BRAZOS
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Terri Kay Oliver
Appeals Judge

Edward Vilano
Appeals Judge