

APPEAL NO. 023199
FILED FEBRUARY 3, 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 26, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable repetitive trauma injury; that the date of injury pursuant to Section 408.007 was _____; that the claimant had disability from July 29 through October 21, 2002; that the appellant (carrier) is not relieved of liability under Section 409.002 because the claimant timely notified his employer of his injury under Section 409.001; and that the carrier is not relieved of liability under Section 409.004 because the claimant timely filed his Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) with the Texas Workers' Compensation Commission (Commission). The carrier appeals the hearing officer's determinations on the issues of the date of injury, timely notice of injury to the employer, and timely filing of the TWCC-41 with the Commission. The claimant's response requests affirmance. There is no appeal of the hearing officer's determinations that the claimant sustained a compensable repetitive trauma injury and that he had disability for the time period found by the hearing officer.

DECISION

The hearing officer's decision is affirmed.

An occupational disease includes a repetitive trauma injury. Section 401.011(34). Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. The hearing officer found that the claimant knew or should have known that his injury may be related to his employment on _____, and concluded that that was the date of injury under Section 408.007. 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. Although there is conflicting evidence in this case, the hearing officer's determination on the date of injury is supported by the claimant's testimony 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).

Section 409.001(a) provides that if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. The hearing officer found that the claimant notified his employer on _____, that he sustained an injury in the course and scope of his employment, which was within 30 days of the date he knew or should have known that his injury may be related to his

employment, and concluded that the carrier is not relieved of liability under Section 409.002 because of any failure of the claimant to timely report the injury. The hearing officer's determination on the notice issue 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, supra.

Section 409.003 provides that if an injury is an occupational disease an employee or a person acting on the employee's behalf shall file with the Commission a claim for compensation not later than one year after the date on which the employee knew or should have known that the disease was related to the employee's employment. The hearing officer found that the claimant filed his TWCC-41 with the Commission on September 30, 2002, which was within the one-year period, and concluded that the carrier is not relieved of liability under Section 409.004 because of any failure of the claimant to timely file his TWCC-41 with the Commission. The hearing officer's determination on the issue of timely claim filing 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, supra.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** 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:

Chris Cowan
Appeals Judge

Terri Kay Oliver
Appeals Judge