

APPEAL NO. 030192
FILED MARCH 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 was held on December 12, 2002, with the record closing on December 18, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury "on _____, _____, or on any [other] relevant date," that the claimant did not have disability, that the claimant timely reported "a repetitive trauma mental stress injury in accordance with Section 409.001, but not of the other conditions Claimant is alleging," and that the respondent's (carrier) defense of compensability is not limited to the defenses listed on the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) filed on January 31, 2002, because the notice was only of a repetitive trauma mental stress claim.

The claimant appeals several of the hearing officer's determinations, emphasizing her testimony and asserting that her first Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) also mentions "spasms due to stress from lifting heavy paper boxes." The claimant alleges that if the carrier had done an adequate investigation it could have found out about the claimant's alleged neck and back injury. The carrier responds, urging affirmance.

DECISION

Affirmed.

Much, if not most, of the evidence is in dispute. The claimant, an office supply store department manager, testified that on _____, she sustained a neck and back injury. The evidence is in conflict whether she was claiming a specific incident lifting some boxes, or a repetitive trauma injury. In a letter dated January 15, 2002, to the employer, the claimant complains the "illness is stress related to stress on the job." In another undated and unsigned letter, the claimant complains about her supervisor, Mr. E.

The claimant filed a TWCC-41 dated January 17, 2002, which alleges a _____, date of injury, with an entry that the injury was due to "stress [lifting] Heavy Paper Box," part of the body injured was listed as "muscles are all having spasms," the nature of the injury was "Stress from [Mr. E]" and "[Mr. E] stressing me out Because of stress." A medical report dated January 24, 2002, makes no mention of neck or back complaints. The carrier asserts that it first received written notice of this alleged injury, on January 29, 2002, and filed its TWCC-21 contesting compensability on January 31, 2002. The claimant filed a second TWCC-41 dated March 2, 2002, alleging a "Feb of 2001" injury to the neck and low back carrying and lifting "paper boxes." The carrier filed its TWCC-21 asserting that it received first written notice of this claim on March 8, 2002, and contested compensability, to include lack of timely notice

to the employer, on March 14, 2002. The claimant filed a third TWCC-41 dated April 2, 2002, alleging an "Aug 2000" date of injury, with injury to the neck and back "Lifting paper boxes."

The parties agreed that the claimant was not pursuing a mental stress claim. The claimant contends that the January 17, 2002, TWCC-41 gave the employer and the carrier sufficient notice of a neck and back injury and that the carrier had not raised a timely notice defense. The first medical report that references a neck injury is in progress notes dated February 21, 2002, from the treating doctor that says "neck pain [with] [illegible] down [right] arm." The first back complaints noted in the records appears to be in an MRI performed on February 26, 2002.

The hearing officer's determinations involved factual determinations and interpretation as to what the various TWCC-41's were alleging. The hearing officer found the January 17, 2002, TWCC-41 only alleged a repetitive mental stress injury which the claimant is no longer pursuing. The hearing officer found that the alleged neck and back injuries were not timely asserted and that the carrier is not limited to the defenses asserted in its January 31, 2002, TWCC-21.

Upon review of the record submitted we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We do not so find.

Accordingly, 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 CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

CONCUR IN THE RESULT:

Edward Vilano
Appeals Judge