

APPEAL NO. 030670
FILED APRIL 17, 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 January 15, 2003. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury of _____, does not extend to or include the diagnoses of herniated discs at C4-5, C5-6, C6-7, and C7-T1. The claimant appealed and the respondent (carrier) responded.

DECISION

Affirmed.

The carrier asserts that the claimant's appeal may be untimely. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant is deemed to have received the hearing officer's decision on February 19, 2003, which was five days after the date it was mailed to her (the claimant states that she received the hearing officer's decision on February 19, 2003). Pursuant to Section 410.202, as amended June 17, 2001, and Rule 143.3(c), the claimant had until March 12, 2003, to mail her request for appeal to the Texas Workers' Compensation Commission (Commission), and the mailed request for appeal had to be received by the Commission by March 19, 2003. The envelope in which the claimant's appeal was mailed to the Commission is postmarked March 12, 2003, and the appeal was received by the Commission on March 17, 2002. The claimant's request for appeal was timely filed with the Commission.

It is undisputed that the claimant sustained compensable shoulder and elbow injuries from performing her work activities as a sewing machine operator. The claimant contended that her compensable repetitive trauma injury includes the herniated discs in her neck because she had to turn her head while she worked. The hearing officer considered the evidence regarding whether the compensable injury extended to the herniated discs at C4-5, C5-6, C6-7, and C7-T1 and found that the claimant's employment did not require repetitious, traumatic activities that involved the claimant's neck. 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 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 v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

**ROBIN MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Robert W. Potts
Appeals Judge

CONCUR:

Terri Kay Oliver
Appeals Judge

Edward Vilano
Appeals Judge