

APPEAL NO. 031121
FILED JUNE 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 April 7, 2003. The hearing officer decided that the date of the claimed injury is _____; that respondent 2 (carrier 2 herein) is relieved of liability because it did not have coverage for the employer on the date of injury; that the appellant (claimant herein) did not sustain a compensable injury in the form of an occupational disease; that respondent 1 (carrier 1 herein) is relieved of liability because the claimant did not timely report an injury to the employer; that carrier 1 is not relieved of liability for failure to timely file a claim with the Texas Workers' Compensation Commission (Commission); and that absent a compensable injury, the claimant did not have disability. The claimant appeals, contending the hearing officer's determinations concerning date of injury, injury, timely report of injury, and disability are contrary to the evidence. Carrier 1 responds that the decision of the hearing officer was supported by the evidence. There is no response from carrier 2 to the claimant's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant attached additional medical records to her request for review. We note that we will not generally consider evidence not submitted into the record, and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that the evidence attached to the claimant's request for review meets this test.

The hearing officer did not err in her determinations on the issues of occupational disease injury, date of injury, and timely notice of injury. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36). 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. 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. Conflicting evidence was presented on the issues of

occupational disease injury, date of injury, and timely notice to the employer. 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 from the evidence presented. We conclude that the hearing officer's determinations on the issues of occupational disease injury, date of injury, timely notice to the employer, and timely filing of the claim 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).

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition disability depends upon a compensable injury. See Section 401.011(16).

We affirm the hearing officer's decision and order.

The true corporate name of insurance carrier 1 is **HIGHMARK CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

The true corporate name of insurance carrier 2 is **CRUM & FORSTER INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY, SUITE 1000
PLANO, TEXAS 75093.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge