

APPEAL NO. 031265
FILED JULY 8, 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 April 22, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) was injured in the course and scope of her employment on _____; that the claimant had disability beginning November 2, 2002, through the date of the CCH; and that the appellant (carrier) is not relieved from liability pursuant to Section 409.002. The carrier appealed, arguing that the evidence presented at the CCH was insufficient to support the hearing officer's determinations that the claimant sustained an injury in the course and scope of her employment and that the evidence admitted shows that the claimant did not report her injury to employer prior to November 1, 2002, and did not have good cause for failure to report her injury to employer within thirty days. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury as defined by Section 401.011(10), that she gave timely notice of her injury to her employer as required by Section 409.001, and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented on the issues of compensable injury, timely notice, and disability. 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. The hearing officer noted that the claimant was a very credible witness and noted that two doctors who treated the claimant confirm a right rotator cuff tear as a result of overhead work.

We conclude that the hearing officer's determinations that the claimant sustained a compensable injury, that she timely notified her employer of her injury, and that she had disability beginning November 2, 2002, through the date of the CCH, 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.2 175 (Tex. 1986). The hearing officer found that the claimant reported her injury to her supervisor on _____, and there was evidence to support that finding. Because the hearing officer found that the claimant timely reported her injury, it was unnecessary to make the additional finding that the claimant had good reason for not pursuing her claim until November 7, 2002, because she thought the injury was trivial. We therefore, consider this finding to be surplusage.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS HOSPITAL INSURANCE EXCHANGE** and the name and address of its registered agent for service of process is

**ROBERT LAWRENCE DION
6300 LA CALMA, SUITE 550
AUSTIN, TEXAS 78761.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge