

APPEAL NO. 031990
FILED SEPTEMBER 15, 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 July 2, 2003. The hearing officer resolved the disputed issues by deciding that the date of injury is _____; that the respondent (carrier) is relieved from liability under Section 409.002 because the appellant (claimant) did not report the injury to her employer within 30 days after the date of injury and did not have good cause for failing to do so; that the claim is not compensable because the carrier is relieved of liability; and that the claimant did not have disability because the claim is not compensable. The claimant appealed, essentially on grounds of sufficiency of the evidence. The carrier responded, urging affirmance.

DECISION

Affirmed as reformed.

The claimant testified that she worked in the marketing department for the employer and that she coordinated all of the samples that went out to various customers. The claimant testified that she was twisting and reaching for materials in an upper cabinet when she felt a sharp pain. She testified that the pain got progressively worse as she continued to perform her job duties. The claimant contended that her injury was a result of both a specific incident when she was reaching as well as repetitive activities of working consistently on a computer keyboard and the poor set-up of her work area. The hearing officer specifically found that the claimant sustained a specific incident injury when she turned and reached for an object from a cabinet in the course and scope of her employment on _____, and not a repetitive trauma injury. In view of the evidence presented, we cannot conclude that such determination is 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).

Section 409.001(a) provides that 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 injury occurs. Section 409.002 provides that failure to notify an employer as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability unless the employer or the carrier has actual knowledge of the employee's injury, the Texas Workers' Compensation Commission determines that good cause exists for failure to provide notice in a timely manner, or the employer or the carrier does not contest the claim. The claimant contends that there were extenuating circumstances which prevented her from reporting her injury sooner.

The hearing officer was not persuaded that it was reasonable for the claimant to delay reporting the injury to the employer until September 19, 2002, finding no good

cause for such failure to do so. 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. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Compensable injury is defined as an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle. Because the carrier is relieved of liability pursuant to Section 409.002, compensation is not payable and this otherwise compensable injury is, therefore, not compensable within the meaning of the statute. Section 401.011(10). The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 410.011(16). Because we have affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

We reform the decision and order to correct the typographical error in both the conclusions of law and the decision which refer to Section 408.002 rather than 409.002.

We affirm the decision and order of the hearing officer as reformed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge