

APPEAL NO. 032314
FILED OCTOBER 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 convened on June 3, 2003, and was continued to and concluded on August 5, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury; that the date of injury pursuant to Section 408.007 is _____; that the respondent (carrier) is not relieved from liability under Section 409.002 because the claimant timely notified her employer of her alleged injury pursuant to Section 409.001; and that the claimant did not have disability. In her appeal, the claimant essentially argues that the hearing officer's determination that she did not sustain a compensable injury is against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance. The hearing officer's determinations that the date of injury is _____, that the claimant did not have disability, and that the carrier is not relieved of liability pursuant to Section 409.002 were not appealed and have become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable occupational disease injury with a date of _____. The claimant had the burden of proof on that issue. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The injury issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence on the issue of the nature and duration of the keyboarding activities performed by the claimant in her job as an assistant manager for the employer. The hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury. She simply was not persuaded that the claimant sustained her burden of proving that she developed bilateral carpal tunnel syndrome as a result of performing repetitive, physically traumatic activities at work. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or

manifestly unjust; therefore, no sound basis exists for us to reverse the injury determination on appeal. Pool, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

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

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge