

APPEAL NO. 032360
FILED OCTOBER 27, 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 commenced on July 30 and concluded on August 7, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the date of injury (DOI) is _____; that the claimant did not have disability; and that the respondent (carrier) had not waived the right to contest compensability of the claimed injury.

The claimant appealed, contending that the hearing officer's determinations were "clearly erroneous," contrary to the overwhelming weight of the evidence, and that there was no evidence to support the determined DOI. The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant, a workers' compensation insurance adjuster, contends that he sustained a bilateral repetitive trauma injury doing keyboarding on (alleged date of injury), and that he has had disability since that date. It is undisputed that the claimant had a prior compensable injury in (prior date of injury), a nonwork-related motor vehicle accident in March 2001 and another work-related injury on (subsequent date of injury). Although disputed, it appears that the claimant was asserting wrist pain or a wrist injury in all those events. The claimant returned to work part time, from his (subsequent date of injury), injury, and claimed a carpal tunnel syndrome (CTS) injury due to a "renewed commitment" to his job. The claimant saw a number of doctors through the years as summarized in some detail by the hearing officer in her Statement of the Evidence. The claimant contends that he gave notice to the carrier of a new injury by a letter dated June 7, 2002, to his adjuster for the (subsequent date of injury), injury. The adjuster denied receiving the letter and the hearing officer noted that the letter contained no new DOI, was not to be read as asserting a claim, and there was nothing in the letter to alert the employer or the carrier that the claimant was referencing anything other than his (subsequent date of injury), claim. The claimant subsequently submitted an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) on August 14, 2002, alleging a (alleged date of injury), bilateral CTS injury. The carrier disputed the claim on August 20, 2002. In that the carrier disputed the claim pursuant to Section 409.021(a), the hearing officer's determination on carrier waiver is supported by the evidence.

Whether the claimant sustained a new injury on (alleged date of injury), as alleged was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the

trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Nothing in our review of the record indicates that the hearing officer's decision on this issue 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).

Because we are affirming the hearing officer's determination of no compensable injury and no carrier waiver, the claimant cannot, by definition in Section 401.011(16), have disability.

The claimant contends that there was no evidence to support a _____, DOI. However, a report from Dr. K of that date supports the hearing officer's determination on that issue and certainly there are other records to support a November 2001 DOI.

Accordingly, the decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge