APPEAL NO. 032486
FILED OCTOBER 29, 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 August 21, 2003. The hearing officer determined that the appellant/cross-respondent (claimant) sustained a bilateral repetitive trauma injury, but that the injury is not compensable because the claimant failed to prove a specific date of injury and failed to give timely notice of the injury to the employer; that the date of injury (DOI) "is two or three months" prior to November 19, 2002 (another determination makes the DOI not later than September 19, 2002); that because the claimant had not sustained a compensable injury, the claimant did not have disability; and that the respondent/cross-appellant (carrier) is relieved of liability because the claimant failed to timely notify the employer of her injury and did not have good cause for failing to do so. With regard to (Docket No. 2), the hearing officer determined that the claimant did not sustain a second repetitive trauma injury to her left upper extremity "with onset of symptoms in (date of injury for Docket No. 2)" (with a (date of injury for Docket No. 2), DOI), and, as found regarding (Docket No. 1), determined that there was no disability.

The claimant appeals, contending that the hearing officer's factual determinations regarding the DOI, which resulted in a determination that she had not timely given notice to the employer and, therefore, the repetitive trauma injury was not compensable, to be in error, citing a specific piece of evidence. The carrier appeals the hearing officer's determinations that the claimant sustained a repetitive trauma injury. The carrier responds to the claimant's appeal urging affirmance. There is no response to the carrier's appeal.

DECISION

Affirmed.

The parties discussed at length the claimant's duties and how they required repetitive use of hands and wrists. The hearing officer, as the sole judge of the weight and credibility of the evidence, determined that the claimant sustained a repetitive trauma injury and that determination is supported by the evidence.

The crux of the claimant's argument is that she timely reported an injury to her employer on November 14, 2002. In evidence is a patient information form, dated November 19, 2002, mostly completed by the claimant. In response to the question, when did your symptoms appear, is the response "a while back, 2-3 month or greater." The phrase "2-3 month or greater" is written in heavier ink (or bold) color and could be interpreted as a different handwriting than the rest of the form. This item was discussed at length at the CCH. The claimant testified that her symptoms first began a week or two prior to November 14, 2002, and that she did not write the "2-3 month or greater" phrase and does not know who did. The hearing officer concluded that even if the

claimant did not write the "2-3 month" part the claimant gave this information to the doctor or someone on his staff. The hearing officer determined that the DOI was two or three months prior to November 19, 2002, and at least by September 19, 2002.

Section 409.001(a)(2) provides that an injury must be reported to the employer "not later than the 30th day after the date" on which:

> (2) . . . the employee knew or should have known that the injury may be related to the employment.

The hearing officer made a factual determination that the DOI was no later than September 19, 2002, and was not reported until November 14, 2002. The hearing officer's determination is supported by sufficient evidence and is not so against the great weight and preponderance as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The parties appeared to litigate a bilateral injury, which was reported on November 14, 2002, but the claimant also claims a new left upper extremity repetitive trauma injury with the onset of symptoms in (date of injury for Docket No. 2) (Docket No. 2). The hearing officer determined that there was no new separate, later injury in December.

We also affirm the hearing officer's determination that without a compensable injury the claimant cannot have disability. Conflicting evidence was presented on the disputed issues. 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. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Chris Cowan
Appeals Judge