

APPEAL NO. 032627
FILED NOVEMBER 14, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A consolidated contested case hearing was held on May 15, 2002, March 12, 2003, and August 27, 2003, with the record closing on August 27, 2003.

In (Docket No. 1), the hearing officer determined that respondent 1's (claimant) (date of injury for Docket No. 1), compensable injury extends to include the diagnosed condition of bilateral carpal tunnel syndrome (BCTS); and that the appellant (carrier 1) is not relieved of liability under Section 409.004 because the claimant failed to timely file a claim for compensation. Carrier 1 appealed the hearing officer's determinations that the claimant's (date of injury for Docket No. 1), compensable injury includes BCTS, and that carrier 1 is not relieved of liability. The file does not contain a response from the claimant or from respondent 2 (carrier 2).

In (Docket No. 2), the hearing officer determined that the date of injury is (date of injury for Docket No. 2); that the claimant did not sustain a compensable injury in the form of an occupational disease; that the claimant did not timely report an injury to her employer; and that no good cause exists for such failure to timely report an injury. These determinations have not been appealed and have become final as a matter of law. Section 410.169.

DECISION

We affirm.

The claimant worked for the employer for 31 years as a flight attendant. In 1993 she had a compensable injury to her wrist that was diagnosed as probable early carpal tunnel syndrome. The insurer at the time was carrier 1, which accepted the injury with no specific diagnosis and paid the medical expenses related thereto. The condition allegedly resolved in a couple of months by the claimant's wearing wrist splints. The claimant testified in detail about her duties in the coach cabin area including, opening and closing overhead bins, a lot of lifting, twisting, turning, gripping and, along with another flight attendant, pushing and pulling a beverage cart that weighed 150 to 200 pounds. In 1998 she started working in first class, where the work was more demanding. Instead of plastic trays and utensils, she served from silver trays and coffee pots and crystal dishes, with her hand flat and supporting the tray with her thumb. She had to push and pull the beverage cart alone and work the hand brake on it that required her to turn her hands up and down using her thumbs to release it for each row of seats. The claimant testified that in October or November of 2000, she began feeling numbness and tingling in both hands and started losing her grip and that she realized at this time that it was related to her work. She also testified that she reported a date of injury of _____, because that was when she knew the injury was work-related.

She reported the injury to her supervisor on January 15, 2001. Carrier 2 was the insurer at that time.

Carrier 1 contended that the claimant suffered a new injury in (subsequent date of injury) due to the material change in her job duties, as her 1993 injury had resolved. Carrier 2 contended that the claimant's hand problems were a continuation of her 1993 injury. Each side had medical evidence to support its claim. The hearing officer found that the (date of injury for Docket No. 1), injury included the diagnosed conditions of BCTS, with respect to Docket No. 1. 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. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by the claimant's testimony and by the opinions of an independent medical examiner and the claimant's own treating doctor. The hearing officer's decision is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer found that since carrier 1 did not contest the compensability of the (date of injury for Docket No. 1), claim, carrier 1 was not relieved from liability because Section 409.004 does not apply. We agree. Section 409.004 in pertinent part states that:

Failure to file a claim for compensation with the [Texas Workers' Compensation Commission] as required under Section 409.003 relieves the...insurance carrier of liability under this title unless...

(2) the...insurance carrier does not contest the claim.

The record is clear that carrier 1 accepted liability and paid for treatment of a compensable wrist injury of some sort in 1993. Accordingly, the hearing officer's determination is supported by the evidence.

The hearing officer's decision and order are affirmed.

The true corporate name of insurance carrier 1 is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

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

The true corporate name of insurance carrier 2 is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**WILLIAM PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Elaine M. Chaney
Appeals Judge