

APPEAL NO. 032789
FILED DECEMBER 8, 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 September 18, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable repetitive trauma injury on _____; that the claimant has disability from May 13, 2003, through the date of the CCH; and that the claimant timely notified her employer pursuant to Section 409.001. The appellant (carrier) appealed, arguing that the determinations were against the great weight and preponderance of the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that she spent 90% of her workday typing, and contended that she sustained a compensable injury as a result of the repetitive activity performed in the course and scope of her employment. An occupational disease includes a repetitive trauma injury. Section 401.011(34). The claimant had the burden to prove that she sustained a repetitive trauma injury as defined by Section 401.011(36). Conflicting evidence was presented on this disputed issue. 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 compensability determination 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 v. Bain, 709 S.W.2d 175 (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. It was undisputed that the claimant reported her injury on May 7, 2003. However, the carrier contended that the date of injury was April 1, 2003, rather than _____, as found by the hearing officer. The date of injury, when the claimant knew or should have known that her injuries may be related to the employment, and whether the carrier is relieved from liability because it did not receive timely notice of the injury, were also issues for the hearing officer to resolve. Conflicting evidence was presented regarding the date of injury. The claimant testified that she had symptoms of pain on April 1, 2003, but that

the pain got worse and that her wrists were swollen and the pain was severe on _____. The hearing officer noted that the claimant did not know she was injured until the problems included swelling and severe pain that would not go away. The hearing officer's determination of date of injury and timely notice are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The hearing officer's decision on the disability issue 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*.

We affirm the decision and order of the hearing officer.

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

**LEO MALO ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge