

APPEAL NO. 033076  
FILED JANUARY 6, 2004

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 4, 2003, and continued on October 14, 2003, with the record closing on October 27, 2003. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) did not sustain a compensable injury in the form of an occupational disease while working for the employer because she did not timely report her injury to the employer; that had the claimed injury been compensable, the date of injury is \_\_\_\_\_; and that since there is no compensable injury, there can be no resultant disability. The claimant appealed, disputing the timely reporting, date-of-injury, and disability determinations. The respondent/cross-appellant (carrier) responded, urging affirmance of the challenged determinations. The carrier appealed the finding that the repetitive trauma occupational disease claimed by the claimant to her bilateral upper extremities was the result of the repetitive job duties she performed for the employer. The appeal file did not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified about the various tasks she performed during a shift while working for the employer. The hearing officer did not err in her determinations on the issues of occupational disease injury, date of injury, disability, and timely notice of injury. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36). Although the hearing officer found that the repetitive trauma occupational disease claimed by the claimant to her bilateral upper extremities was the result of the repetitive job duties she performed for the employer, she concluded the injury was not compensable because she found that the claimant did not timely report her injury. The hearing officer was not persuaded that the claimant had good cause for failing to timely report her injury to her employer, despite the claimant's assertion that she trivialized the injury. Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. The hearing officer found that \_\_\_\_\_, was the first day the claimant knew or should have known the occupational disease which she claims may be related to her employment. Section 409.001(a) provides that, if the injury is an occupational disease, 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 employee knew or should have known that the injury may be related to the employment. Conflicting evidence was presented on the issues of occupational disease injury, date of injury, and timely report of injury to the employer. 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 from the evidence presented. We conclude that the hearing officer's determinations on the issues of occupational disease injury, date of injury, and timely notice to the employer are supported by sufficient evidence and are 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 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the determination that the claimant did not sustain a compensable injury because she did not timely report her injury to her employer, we likewise affirm the determination that she did not have disability. Additionally, the hearing officer made a separate finding that the inability of the claimant to obtain and retain employment at wages equivalent to the preinjury wage from January 24, 2003, through the date of the CCH was the result of something other than an injury occurring while the claimant worked for the employer.

We affirm the decision and order of the hearing officer.

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

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

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge