

APPEAL NO. 033130
FILED JANUARY 15, 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 was held on November 5, 2003. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable repetitive trauma injury with a date of injury of _____; (2) the respondent (carrier) is relieved from liability under Section 409.002, because the claimant failed, without good cause, to timely notify his employer of an injury pursuant to Section 409.001; (3) the alleged repetitive trauma injury does not include Hepatitis B, bilateral upper extremity injuries, T-11 compression fracture, disc bulges at C3-4 and/or C4-5, arthrosis at L4-5 and/or L5-S1, or lumbar arthritis; (4) the carrier has not waived the right to contest compensability of the claimed injuries because it timely disputed the injuries in accordance with Section 409.021; and (5) the carrier is relieved from liability under Section 409.004 because the claimant failed to file a claim for compensation, without good cause, within one year of the injury as required by Section 409.003. The claimant appeals these determinations essentially on sufficiency of the evidence grounds and makes numerous assertions of procedural error. The carrier responds that the claimant's appeal was not filed by an authorized representative and, in the alternative, urges affirmance.

DECISION

Affirmed.

We first address the carrier's assertion that the request for review was not filed by an authorized representative and does not constitute a valid appeal. The record shows that the claimant retained Mr. D to represent him with regard to this claim. Because Mr. D would testify at the hearing below, he filed a request to withdraw as the claimant's attorney, stating "[Mr. D] will continue to assist the claimant in preparing his case, but will not represent him at the Contested Hearing." Mr. D also represents on appeal that "[the claimant] called me and requested that I file the appeal." In view of the record, we cannot conclude that the claimant's appeal was not properly filed.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact 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)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer reviewed the evidence and determined what facts were established. We cannot conclude that the hearing officer's determinations are 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). Nor can we conclude that the hearing officer abused his discretion. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The claimant complains that “the hearing officer should have allowed the claim to go forward as an occupational disease, and he should not have limited it to a repetitive trauma injury.” We note that the claimant asserted a compensable injury as a result of repetitively traumatic activities at work which occurred over time. The claimant offered no alternate theory of entitlement and withdrew his claim with regard to Hepatitis B. The hearing officer considered the theory advanced by the claimant and found that the claimant’s work was not repetitively traumatic and that the claimed conditions were not caused or aggravated by the claimant’s employment. As stated above, we cannot conclude that such determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The claimant appears to argue that the hearing officer considered an incorrect date of injury and, therefore, did not reach the proper conclusion in this case. Our review of the record reveals that the claimant asserted a repetitive trauma injury with a date of injury of _____. Again, the hearing officer found that the claimant’s work was not repetitively traumatic and did not cause or aggravate the claimed conditions. The hearing officer, then, concluded that the claimant did not sustain a compensable repetitive trauma injury with a date of injury of _____. Accordingly, we find no error.

The claimant also complains that the hearing officer exceeded “his medical expertise in concluding that arthrosis at L4-5 and L5-S1 and lumbar arthritis are the same condition.” We note that the claimant’s treating doctor indicated in his testimony that the L4-5 and L5-S1 arthrosis and lumbar arthritis are essentially the same condition, in this instance. This is further supported by the medical evidence. Accordingly, we perceive no error.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for United Pacific Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY
9120 BURNETT ROAD
AUSTIN, TEXAS 75758.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge