

APPEAL NO. 033131
FILED JANUARY 12, 2004

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 (CCH) was held on September 16, 2003. The hearing officer resolved the disputed issues by deciding that respondent 1's (claimant) compensable injury sustained on _____, does not extend to and include a disc herniation at the L4-5 level of the lumbar spine subsequent to (subsequent date of injury); that the claimant sustained an occupational disease in the form of a disc herniation at the L4-5 level of the lumbar spine, with a date of injury of (subsequent date of injury); that the claimant had good cause for his failure to timely notify the employer of a work-related injury and the appellant (carrier 2) is not relieved of liability for the claim pursuant to Section 409.002; and that the claimant had disability beginning December 2, 2002, and continuing through the date of the CCH. Carrier 2, who is the workers' compensation insurance carrier for the (subsequent date of injury), date of injury, appeals the hearing officer's determinations on all of the disputed issues. No response was received from the claimant or from respondent 2 (carrier 1), who is the workers' compensation insurance carrier for the 1994 injury.

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a repetitive trauma injury as defined by Section 401.011(36); that he had disability as defined by Section 401.011(16); and that he timely notified his employer of his injury pursuant to Section 409.001(a)(2), or had good cause for failing to timely report the injury to the employer. 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 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 determinations on the appealed issues 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). In light of the confusion shown in the medical records as to whether the claimant's back condition was a continuation of his 1994 injury or a new injury caused by work-related repetitive trauma, and the claimant's stated good faith belief that he thought his back condition was covered under the 1994 injury, we cannot agree with carrier 2's assertion that the hearing officer could not, as a matter of law or of fact, find good cause for failing to timely report the new injury to the employer. See Texas Workers' Compensation Commission Appeal No. 981397, decided August 6, 1998.

We affirm the hearing officer's decision and order.

The true corporate name of insurance carrier 1 is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** 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.**

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

**STEPHEN C. CARLIN
13155 NOEL ROAD
900 THREE GALLERIA TOWER
DALLAS, TEXAS 75240.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge