APPEAL NO. 033302
FILED FEBRUARY 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 October 24, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease/repetitive trauma injury; that the claimant failed to timely notify his employer pursuant to Section 409.001, and the respondent (carrier) is relieved of liability under Section 409.002; that the claimant does not have disability; and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy.

The claimant appealed the injury, timely notice, and disability determinations on sufficiency of the evidence grounds. The carrier responded, urging affirmance. The hearing officer's determination regarding election of remedies has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

It is undisputed that the claimant was employed as a draftsman. The claimant testified that his job entailed putting the lettering on oilfield maps. The claimant described the manner in which he performed his job, which required him to keep his right elbow and forearm steadily placed on the drafting table. The claimant testified that he began to develop pain in his right elbow and that on _____, he decided to seek medical attention. The claimant testified, and a medical report in evidence supports that testimony, that he discussed with the doctor the possibility of his problems being work related. The claimant was taken off work for a few days and instructed to rest. The claimant testified that when he returned to work, he informed the general manager (now deceased) of his work-related injury and inquired about filing a workers' compensation claim. The claimant contends that the general manager did not want to file the claim under workers' compensation, and that the claimant did not pursue the issue further out of concern for his job. The claimant eventually underwent surgery in April of 2003. By July of 2003, the claimant could no longer perform his job and an Employer's First Report of Injury or Illness (TWCC-1) was completed on July 31, 2003. The carrier asserted that the claimant's right upper extremity problem is not related to his employment, and that while the employer may have been aware that the claimant was having problems with his right elbow and forearm in early February 2001, it was unaware that the claimant was claiming his problems were work related until July of 2003.

The claimant had the burden to prove that he sustained a compensable injury, that he had disability as defined by Section 401.011(16), and that he gave timely notice

of injury to his employer pursuant to Section 409.001. Conflicting evidence was presented on the disputed issues at the CCH. 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. We recognize that on appeal, the claimant asserts that the hearing officer improperly treated the claimed injury as a repetitive trauma injury instead of an occupational disease. As the hearing officer points out, the asserted cause of the claimed injury is unusual. As such, the hearing officer may want expert medical evidence which explained how the claimant's employment caused or aggravated his condition. In the instant case, the hearing officer determined that the claimant failed to supply such evidence. Without sufficient evidence of causation, we perceive no error in the hearing officer calling the condition a repetitive trauma injury instead of an occupational disease. With regards to the issue of timely notice, the hearing officer could believe that the claimant's conversation with the now deceased general manager in early February 2001, did not amount to the report of a work-related injury pursuant to Section 409.001. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations that the claimant did not sustain a compensable injury; that he did not timely notify his employer pursuant to Section 409.001; and that he did not have disability 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).

We affirm the decision and order of the hearing officer.

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

DOROTHY A. LANGLEY
10000 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75231.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

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Edward Vilano
Appeals Judge