

APPEAL NO. 033342
FILED FEBRUARY 17, 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 November 20, 2003. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on or about (alleged date of injury); (2) the respondent (self-insured) is relieved from liability for the claimed injury pursuant to Section 409.002, because the claimant failed to timely notify her employer of the claimed injury, without good cause, in accordance with Section 409.001; and (3) the claimant's left carpal tunnel syndrome (CTS) is properly covered under the prior compensable injury of _____. The claimant appeals these determinations on sufficiency of the evidence grounds and asserts that the hearing officer applied an improper standard in reaching her decision. The self-insured did not file a response.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury in the form of bilateral CTS on _____. The claimant testified, however, that she experienced no symptoms in her left wrist at that time. The claimant began to experience symptoms in her left hand in the summer of 2001. At that time, she believed her symptoms were caused by her work, which consisted primarily of computer usage. The claimant notified her employer of her injury on November 20, 2001.

The hearing officer considered the evidence and found that the claimant did not sustain a new injury in the course and scope of her employment. In reaching this determination, the hearing officer stated:

Since the evidence contained in the record of the [CCH] unequivocally establishes that Claimant sustained bilateral [CTS] in 1994, and that Self-Insured accepted such as compensable at that time, it appears logical to conclude that Claimant's current [symptoms] of [CTS] are properly attributable to her original compensable injury of 1994, as opposed to being attributable to an alleged new compensable injury occurring on or about (alleged date of injury).

* * * *

Furthermore, although Claimant's original [CTS] was accepted as a compensable injury in 1994, new medical research tends to indicate that in the vast majority of cases, [CTS] does not constitute a compensable injury, but rather constitutes an ordinary disease of life. In light of these recent medical studies, the hearing officer is not of the opinion that

Claimant has met her burden of proof to demonstrate that she sustained a new compensable injury in 2001.

The hearing officer also found that the claimant did not report the alleged new injury within 30 days of the occurrence of such injury, without good cause.

Whether the claimant sustained a new injury and whether she gave timely notice of such injury to her employer were 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 could believe that the claimant's current symptoms are "attributable to her original compensable injury of 1994." This implies that the claimant did not sustain a compensable aggravation injury. The hearing officer could also find that the claimant did not report the alleged new injury within 30 days of the occurrence of such injury and did not have good cause for failing to do so. In view of the evidence presented, we cannot conclude that such 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 her discretion. Morrow v. H.E.B. Inc., 714 S.W.2d 297 (Tex. 1986).

The claimant appears to assert that the hearing officer applied an improper standard in reaching her decision with regard to the issue of compensable injury. The claimant cites the hearing officer's comments above, concerning "new medical research." To the extent that the hearing officer held the claimant to a higher burden of proof or otherwise decided that CTS is not compensable as a matter of law, this was error. Notwithstanding, the Appeals Panel will affirm the decision of a hearing officer on any grounds supported by the evidence. Daylin, Inc. v. Juarez, 766 S.W.2d 347, 352 (Tex. App.-El Paso 1989, writ denied). As indicated above, the hearing officer could find that the claimant's current symptoms are attributable to the compensable injury of _____, and the evidence supports the determination that the self-insured is relieved from liability for the claimed injury because the claimant failed to timely notify her employer of the injury, without good cause.

The hearing officer's decision and order is affirmed, for the reasons stated above.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

CONCUR IN THE RESULT:

Margaret L. Turner
Appeals Judge