

APPEAL NO. 040138  
FILED MARCH 11, 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 December 17, 2003. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) did not sustain a compensable repetitive trauma injury; that the date of injury pursuant to Section 408.007 was \_\_\_\_\_; that the claimant timely notified his employer of his claimed injury; and that the claimant has not had disability because he did not sustain a compensable injury. The claimant appeals the hearing officer's determinations that he did not sustain a compensable repetitive trauma injury and that he has not had disability. The respondent/cross-appellant (carrier) appeals the hearing officer's determinations on the issues of the date of injury and timely notice of injury to the employer. The carrier also appeals the hearing officer's finding of fact that the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage from \_\_\_\_\_, through the date of the CCH as a result of his cervical spine condition. The carrier filed a response to the claimant's appeal. No response was received from the claimant to the carrier's appeal.

DECISION

Affirmed.

The claimant claimed that he sustained a repetitive trauma injury as a result of performing his work activities for the employer and that he had disability due to that injury. The claimant had the burden to prove that he sustained a repetitive trauma injury as defined by Section 401.011(36) and that he had disability as defined by Section 401.011(16). The hearing officer was not persuaded that the claimant met his burden of proving that he sustained a repetitive trauma injury from performing his work activities. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant did not sustain a compensable repetitive trauma injury is supported by sufficient evidence and that it is 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 hearing officer did not err in determining that the claimant has not had disability because, without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

Conflicting evidence was also presented on the issues of the date of injury under Section 408.007 and timely reporting of the injury to the employer pursuant to Section 409.001(a). We conclude that the hearing officer's determinations that the date of injury was \_\_\_\_\_, and that the claimant timely notified his employer of his claimed injury 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, *supra*.

Although there is sufficient evidence to support the hearing officer's finding that the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage from \_\_\_\_\_, through the date of the CCH because of his cervical spine condition, the claimant would not have disability as defined by Section 401.011(16) because we are affirming the hearing officer's determination that he did not sustain a compensable repetitive trauma injury.

The claimant had the opportunity to present his evidence, including medical evidence, at the CCH, thus we decline his request to remand the case to the hearing officer for consideration of further medical evidence in the form of reports and opinions of his new treating doctor, which the claimant indicates he would present at a CCH on remand.

We affirm the hearing officer's decision and order.

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

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge