

APPEAL NO. 040356
FILED APRIL 7, 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 January 20, 2004. The hearing officer resolved the disputed issues by deciding that respondent 1's (claimant) compensable injury of _____, includes recurrent carpal tunnel syndrome, but does not include cubital tunnel syndrome, radial tunnel syndrome, or possible thoracic outlet syndrome; that the claimant sustained a compensable repetitive trauma injury with a date of injury of (repetitive trauma date of injury); that the appellant (carrier 2), who is the workers' compensation insurance carrier for the compensable repetitive trauma injury with a date of injury of (repetitive trauma date of injury), is not relieved of liability under Section 409.002 because the claimant timely notified her employer of her injury pursuant to Section 409.001; that carrier 2 is not relieved of liability under Section 409.004 because the claimant timely filed a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year of the injury as required by Section 409.003; and that the claimant had disability as a result of her (repetitive trauma date of injury), compensable injury beginning (repetitive trauma date of injury), and continuing through the date of the CCH.

Carrier 2 appeals the hearing officer's determinations that the claimant sustained a compensable repetitive trauma injury with a date of injury of (repetitive trauma date of injury); that it is not relieved of liability under Sections 409.002 and 409.004; and that the claimant had disability beginning (repetitive trauma date of injury), and continuing through the date of the CCH. No response was received from the claimant or from respondent 2 (carrier 1), who is the workers' compensation insurance carrier for the claimant's compensable injury of _____. There is no appeal of the hearing officer's determination that the claimant's compensable injury of _____, includes recurrent carpal tunnel syndrome, but does not include cubital tunnel syndrome, radial tunnel syndrome, or possible thoracic outlet syndrome.

DECISION

Affirmed.

Carrier 2's contentions on appeal are that the date of injury under Section 408.007 should be (alleged date of injury), and not (repetitive trauma date of injury), as found by the hearing officer and thus the claimant did not timely notify her employer of the injury under Section 409.001 and did not timely file a claim for compensation under Section 409.003, and that the claimant notified the employer of her claimed injury in January 2003, and not October 2002 as found by the hearing officer and thus the notice to the employer was untimely under Section 409.001. Carrier 2 agrees that the claimant filed her claim for compensation with the Commission on February 4, 2003, but

contends that it was untimely based on its alleged date of injury of (alleged date of injury).

Conflicting evidence was presented on the disputed issues. With regard to the date of injury under Section 408.007, the medical reports and the claimant's testimony reflect that there was much confusion as to whether the claimant was experiencing a continuation of her compensable injury of _____, or had sustained a new compensable injury, or was experiencing both a continuation of her _____, injury and a new injury. The issues presented at the consolidated CCH reflect that confusion. Conflicting evidence was also presented on the issue of timely notice to the employer. 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).

We affirm the hearing officer's decision and order.

The true corporate name of insurance carrier 1 is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

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

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

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge