

APPEAL NO. 040462
FILED APRIL 9, 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 was held on February 2, 2004. The hearing officer determined that the appellant (claimant) did not sustain a repetitive trauma injury with a date of injury of _____, that the claimant did not timely notify her employer of an injury pursuant to Sections 409.001 and 409.002, and that because the claimant did not have a compensable injury, the claimant did not have disability.

The claimant appealed the adverse determinations pointing to medical evidence that supports her position, contending that she had not suffered an injury before _____, and that she reported her injury within 30 days of that date and that she has disability. The claimant also requests that we remand the case "to secure a ruling with regard to a specific incident occurring on _____." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is generally undisputed that the claimant, a public records administrator, would occasionally, since 2001, have episodes of soreness and stiffness in her neck and shoulders which she treated with over-the-counter analgesics and which would resolve after a few hours or a day or two. The claimant's duties involved computer keyboarding, data input, typing, etc. The claimant testified that on December 16 or 17, 2002, she had another episode of soreness and stiffness for which she took the over-the-counter medication. Her condition on December 18, 2002, is unclear and disputed. On the morning of _____, the claimant still had the soreness and stiffness but was working at her workstation when she experienced sudden, severe, excruciating pain in her neck and shoulders, which the claimant said paralyzed her. Because the claimant was about 5 months pregnant she called her obstetrician who referred her to an orthopedic surgeon. An MRI, performed on January 9, 2003, had an impression of a large 10-12 mm paracentral disc herniation at C6-7 with mild to moderate stenosis and cord compression. Most of the doctors that the claimant saw believed that the claimant sustained an injury at work but differed on the medical history, exactly what the claimant was doing when she had the sudden severe pain (working on the computer or bending over placing a disc in her computer). The claimant's treating doctor testified that the claimant had a repetitive type stress syndrome, which caused a breakdown in the claimant's neck.

The hearing officer determined that the claimant did not suffer a repetitive trauma injury on _____. There was conflicting testimony and documentary evidence

regarding a possible repetitive trauma injury and therefore the hearing officer's determination on the point is supported by sufficient evidence and is affirmed.

The hearing officer also found that the claimant "knew that the injury may be work related in early 2002." Apparently the hearing officer is referring to Sections 408.007 and 408.001(a)(2) which provide that for an occupational disease which includes repetitive trauma (Section 401.011(34)), the date of injury is the date on which the employee knew or should have known that the disease may be related to the employment. The hearing officer, in essence, found the date of injury for the repetitive trauma to be "early 2002." The hearing officer also found that the claimant notified her employer of an injury on January 9, 2003, concluding that the claimant did not timely notify her employer of the injury. However, the cited Sections 409.001 and 409.002 also provide that if notice of the claimed injury is not given within 30 days of the date of injury the carrier is relieved of liability unless: "[the] carrier has actual knowledge of the employee's injury" or "the [Texas Workers' Compensation Commission (Commission)] determines that good cause exists for failure to provide notice in a timely manner." The claimant's uncontroverted testimony gives rise to the possibility that the claimant trivialized her injury and trivialization has long been recognized as a possible good cause for failure to timely give notice. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. Under some circumstances, the failure to make a finding on actual notice and/or good cause might require a remand but, because we are affirming the hearing officer's determination of no repetitive trauma injury, we hold that the failure to make findings on actual knowledge and good cause does not constitute reversible error in this case.

Because the claimant did not sustain a compensable repetitive trauma injury the claimant cannot by definition in Section 401.011(16) have disability.

The carrier, in closing, emphasized that a specific incident injury issue was not an issue before the hearing officer and that the hearing officer should not address a specific injury theory. The hearing officer did as requested and did not err in not making findings on that theory. However, we note that our affirmance of the hearing officer's decision in this case in no way precludes the claimant from proceeding on a specific incident of _____, basis.

We have reviewed the appealed issues and conclude that the hearing officer's determinations are not 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).

We affirm the hearing officer's decision and order.

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

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge