

APPEAL NO. 040480
FILED APRIL 20, 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 February 4, 2004. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) did not sustain a compensable injury in the form of an occupational disease (mycobacterium abscessus); that the date of injury pursuant to Section 408.007 was _____; that the respondent/cross-appellant (carrier) is not relieved of liability under Section 409.002 because the claimant timely notified her employer of her claimed injury pursuant to Section 409.001; and that the claimant is not barred from pursuing workers' compensation benefits due to an election to receive benefits under a group health insurance policy. The claimant appeals the hearing officer's determinations that she did not sustain a compensable injury in the form of an occupational disease (mycobacterium abscessus) and that she has not had disability. The carrier appeals the hearing officer's determinations on the issues of the date of injury, timely notice of injury to the employer, and election of remedies. The carrier responded to the claimant's appeal. No response was received from the claimant to the carrier's appeal.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained an occupational disease as defined by Section 401.011(34) and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the issue of whether the claimant sustained an occupational disease. The claimant had to establish a reasonable medical probability of a causal connection between her mycobacterium abscessus and her employment. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). 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. The record does not reflect that the claimant's treating doctor had difficulty hearing or understanding the questions posed to him as contended by the claimant. We conclude that the hearing officer's decision that the claimant did not sustain a compensable injury in the form of an occupational disease (mycobacterium abscessus) is supported by sufficient evidence and 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).

With regard to the carrier's appeal, we conclude that sufficient evidence supports the hearing officer's determinations in favor of the claimant on the issues of the date of

injury pursuant to Section 408.007, timely notice of injury to the employer, and election of remedies.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge