

APPEAL NO. 040575
FILED MAY 3, 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 12, 2004. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; (2) the date of injury (DOI) is on or about _____; and (3) because the claimant did not sustain a compensable injury, she did not have disability. The claimant appeals these determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred in making a DOI determination, as that issue was not before the hearing officer. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

INJURY AND DISABILITY

The hearing officer did not err in determining that the claimant did not sustain a compensable occupational disease injury and did not have disability. These determinations involved 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)). In view of the evidence presented, we cannot conclude that the hearing officer's 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).

DATE OF INJURY

The hearing officer did not err in determining that the DOI was on or about _____. As stated above, the claimant asserts that the hearing officer erred in making a DOI determination, as that issue was not before the hearing officer. We have observed that the resolution of disputed issues is not governed by the strict rules of pleading as practiced at common law or in the district courts of the State of Texas. See Texas Workers' Compensation Commission Appeal No. 951848, decided December 18, 1995, and cases discussed therein. Thus, some leeway, consistent with express provisions of the 1989 Act and implementing rules, is to be given to the parties to resolve substantive issues as expeditiously as possible provided that due process principles of fundamental fairness are observed in the joining of issues at each stage of the adjudicatory process. We have also stressed that the inclusion of a DOI is "essential" to resolving the compensability of an injury. Texas Workers' Compensation Commission Appeal No. 94713, decided July 12, 1994. Consistent with these

principles, we have not required that the DOI found by a hearing officer be the same as the date alleged by the claimant when the evidence indicates otherwise. Texas Workers' Compensation Commission Appeal No. 941029, decided September 16, 1994; Texas Workers' Compensation Commission Appeal No. 012988, decided January 10, 2002. This is particularly true in claimed repetitive trauma injury cases where the DOI is always somewhat of a moving target. See Texas Workers' Compensation Commission Appeal No. 94894, decided August 25, 1994. Our review of the record indicates that testimony and documentary evidence was elicited with regard to when the claimant first knew that her injuries may be work related. In view of the evidence, the hearing officer could find that the claimant first knew or should have known that her injury may be related to her work on or about _____. The hearing officer's determination on this matter was not improper, nor is it so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer is affirmed.

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

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

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge