

APPEAL NO. 041399
FILED JULY 27, 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 May 4, 2004. The hearing officer determined that the appellant (claimant herein) did not sustain a compensable repetitive trauma injury; that the date of injury (DOI) pursuant to Section 408.007 is _____; and that the respondent self-insured (carrier herein) is not relieved of liability because the claimant timely notified her employer of the claimed injury. The determinations on DOI and timely notice have not been appealed and have become final. Section 410.169.

The claimant appeals the injury determination basically on sufficiency of the evidence grounds. The carrier responds, urging affirmance.

DECISION

Affirmed.

Section 401.011(34) defines an occupational disease, which includes a repetitive trauma injury, which is defined in Section 401.011(36), as damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment. The claimant has the burden to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Company v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). The hearing officer found that the evidence failed to establish that the claimant engaged in repetitiously traumatic activities. The claimant was an administrative assistant and discussed at length her duties and how she performed them during the 34 years of her employment. While some of the activities may have been repetitive we cannot say that the hearing officer erred by failing to find them repetitiously traumatic.

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Margaret L. Turner
Appeals Judge