

APPEAL NO. 041420
FILED JULY 16, 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 13, 2004. With respect to the issues before him, the hearing officer determined that the appellant (claimant) sustained an occupational disease injury in the course and scope of her employment; that the date of her injury is _____; that she did not timely report her injury to her employer; thus, the respondent (self-insured) is relieved of liability pursuant to Section 409.002; that the self-insured is not relieved of liability pursuant to Section 409.004; and that the claimant did not have disability because she did not sustain a compensable injury. In her appeal, the claimant challenges the date-of-injury and timely notice determinations as being against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The self-insured did not appeal the determinations that the claimant sustained an occupational disease injury in the course and scope of her employment; that it is not relieved of liability pursuant to Section 409.004; and that the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage from August 27, 2003, through the date of the hearing as a result of her _____, injury.

DECISION

Affirmed.

The hearing officer did not err in determining that the date of the claimant's occupational disease injury is _____, and that she did not timely report her injury to her employer without good cause for her failure to do so. The claimant had the burden of proof on those issues and they presented questions of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence on the issue of when the claimant knew or should have known that her injury was work related. The hearing officer determined that the date of injury under Section 408.007 is _____. He was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged date-of-injury determination is so against the

great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. *Pool, supra; Cain, supra*. The success of the claimant's argument that she timely reported her injury was premised upon the success of her argument that the date of injury was in January 2001 also. Thus, given our affirmance of the _____, date of injury, we likewise affirm the determinations that the claimant did not timely report her injury to her employer and that the self-insured is, therefore, relieved of liability for benefits in accordance with Section 409.002.

The existence of a compensable injury is a prerequisite to finding disability. Section 401.011(16). Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

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:

**JONATHAN BOW, 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:

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

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Margaret L. Turner
Appeals Judge