

APPEAL NO. 041496
FILED AUGUST 13, 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 May 25, 2004. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable repetitive trauma injury; (2) that the date of injury was _____; (3) that the appellant (carrier) is not relieved from liability under Section 409.002 because the claimant did timely notify the employer pursuant to Section 409.001; and (4) the claimant had disability for the period beginning on October 9, 2003, and continuing through March 10, 2004, and for the period beginning on April 18, 2004 and continuing through the date of the CCH. The carrier appeals, disputing the injury, date of injury, timely notice to employer, and disability determinations. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that her job as a customer service representative required her to click the mouse of her computer extensively, and contended that she sustained a compensable injury as a result of the repetitive activity performed in the course and scope of her employment. An occupational disease includes a repetitive trauma injury. Section 401.011(34). The claimant had the burden to prove that she sustained a repetitive trauma injury as defined by Section 401.011(36). Conflicting evidence was presented on this disputed issue. 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 hearing officer noted that the claimant was credible and the medical evidence supported a causal link between work activity and injury. Although there is conflicting evidence in this case, we conclude that the hearing officer's compensability determination 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).

Section 409.001(a)(2) provides that an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury, in those instances where the injury is an occupational disease, not later than the 30th day after the date the employee knew or should have known that the injury may be related to the employment. Section 409.002 provides that failure to notify an employer as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability unless the employer or the carrier has actual knowledge of the employee's injury, the Texas Workers' Compensation Commission determines that good cause exists for failure to provide notice in a timely manner, or the employer or the carrier does not contest the claim. The carrier contended that the date of injury was (incorrect date

of injury), rather than _____, as found by the hearing officer. The date of injury, when the claimant knew or should have known that her injuries may be related to the employment, and whether the carrier is relieved from liability because it did not receive timely notice of the injury, were also issues for the hearing officer to resolve. Conflicting evidence was presented regarding the date of injury. The hearing officer noted that the claimant credibly testified that she had never felt anything before like the pain in her right index finger and wrist that began on _____, and that there was no mention of hand or wrist problems in an October 3, 2003, medical report. The hearing officer's determination of date of injury and timely notice are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The hearing officer's decision on the disability issue 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, supra.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

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

Margaret L. Turner
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge