APPEAL NO. 041531
FILED JULY 29, 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 24, 2004. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury; that the date of the alleged injury is _____, that the claimant timely reported her alleged injury to her employer; that respondent 2's (carrier 2), Twin City Fire Insurance Company, defense is limited to date of injury and coverage defenses; and that the claimant did not have disability. In her appeal, the claimant argues that the hearing officer's injury, date of injury, and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal respondent 1 (carrier 1), Royal Insurance Company of America, urges affirmance of all three determinations. In its appeal, carrier 2 also urges affirmance of the determination that the date of injury is _____, a date when it did not provide coverage. The hearing officer's timely notice determination and the determination that carrier 2 is limited to a date of injury and coverage defense were not appealed and have, therefore, become final pursuant to Section 410.169.

DECISION

Affirmed, as reformed.

Initially, we note that Finding of Fact Nos. 6 and 8 contain a typographical error. Each finding references a (incorrect date of injuries), date of injury; however, the hearing officer determined that the date of injury is _____. Accordingly, the references to (incorrect date of injuries), in Finding of Fact Nos. 6 and 8 are changed to _____.

The hearing officer did not err in determining that the claimant did not sustain a compensable repetitive trauma injury and that the date of her alleged injury is _____. The claimant had the burden of proof on those issues. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). They presented questions of fact for the hearing officer to resolve. 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 the nature and duration of activities performed by the claimant in her job. The hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury. She simply was not persuaded that the claimant sustained her burden of proving that she injured her right upper extremity as a result of performing repetitive, physically traumatic activities at work. The hearing officer was acting within her province as the fact finder in so finding. Similarly, the hearing officer was free to determine that the date of injury pursuant to Section 408.007, the date the claimant knew or should have known that that her injury may be related to the employment, is _____. The claimant gave conflicting testimony that could have supported either a _____, or an (alleged date of injury), date of injury. The hearing officer was acting within her province as the fact finder in giving more weight to the evidence that the claimant knew that she may have a work-related injury on _____. Nothing in our review of the record demonstrates that the challenged determinations are 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 those determinations on appeal. Pool, *supra*; Cain, *supra*.

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 insurance carrier 1 is **ROYAL INSURANCE COMPANY OF AMERICA** 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.

The true corporate name of insurance carrier 2 is **TWIN CITY FIRE INSURANCE COMPANY** 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.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge