

APPEAL NO. 041620
FILED AUGUST 26, 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 June 16, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease; that the compensable injury includes bilateral carpal tunnel syndrome (CTS); that the date of injury under Section 408.007 is _____; and that the claimant timely reported her injury to her employer, thus, the appellant (carrier) is not relieved of liability pursuant to Section 409.002. In its appeal, the carrier argues that those determinations are against the great weight of the evidence. In addition, the carrier argues that the hearing officer erred in adding the issue of whether the claimant sustained an occupational disease injury rather than keeping the issue as it was originally framed, namely whether the claimant sustained a compensable injury in the form of an occupational disease in the form of CTS. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury in the form of an occupational disease; that the compensable injury includes bilateral CTS; that the date of injury is _____, and that the claimant timely reported her injury to her employer. Those issues presented 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). As the trier of fact, 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). There was conflicting evidence on the disputed issues and the hearing officer was acting within his province as the fact finder in resolving those conflicts and inconsistencies in favor of the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Finally, we cannot agree that the hearing officer erred in adding the broader issue of whether the claimant sustained an occupational disease injury, as opposed to determining only the issue of whether the claimant sustained an occupational disease injury in the form of bilateral CTS. As the hearing officer noted, at the time he decided to add that issue, the doctor called by the carrier had presented evidence suggesting that the claimant may have suffered an overuse injury in the form of tendonitis. The hearing officer concluded that the issue was being actually litigated. The hearing officer

announced his decision to resolve both an injury and extent-of-injury issue while the doctor was still testifying; thus, we cannot agree with the carrier's assertion that it was denied the opportunity to adequately prepare a defense. Indeed, we note that the mechanism of injury was the same for either the tendonitis or the CTS. We review the decision to add an issue under an abuse of discretion standard and our review of the record does not demonstrate that the hearing officer abused his discretion in deciding to add the issue of whether the claimant sustained an occupational disease injury. Accordingly, we perceive no reversible error.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ACE PROPERTY & CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge