

APPEAL NO. 041790  
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 24, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury with a date of injury of \_\_\_\_\_; that the respondent (carrier) is relieved of liability because the claimant failed to timely notify her employer of the claimed injury; that the injury does not extend to include an injury to the bilateral shoulders and elbows; and that because the claimant did not sustain a compensable injury, the claimant did not have disability.

The claimant appeals, contending that she did sustain a compensable injury and had disability. The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant, a clinical dietitian assistant, contends that she sustained a repetitive trauma injury in the form of bilateral carpal tunnel syndrome (CTS) to her elbows and shoulders performing her work activities for the employer and that she had disability as a result of that injury. It is undisputed that the claimant had been diagnosed with bilateral CTS "three to five years prior to December 2002" and that the employer was aware of the injury and had accommodated the claimant. The claimant said her symptoms worsened and she saw Dr. Z on \_\_\_\_\_, and that she reported a work-related injury to her supervisor the next day, (day after date of injury). The carrier contends that a work-related injury was not reported until March 26, 2003.

The claimant had the burden to prove that she sustained a repetitive trauma injury as defined by Section 401.011(36) and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented regarding the claimant's duties and the hearing officer found that the claimant had failed to prove a worsening, enhancement, and/or acceleration of her preexisting bilateral wrist condition. Similarly, although the claimant testified she reported a work-related injury on (day after date of injury), there was conflicting evidence on that point and the hearing officer found that the claimant did not report a work-related injury to her employer until "on or about March 26, 2003."

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Although there is conflicting evidence in this case, we conclude that the hearing officer's

determinations that the claimant did not sustain a compensable repetitive trauma injury, did not timely report her claimed injury to the employer and therefore did not have disability are supported by the evidence and are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Margaret L. Turner  
Appeals Judge

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Edward Vilano  
Appeals Judge