

APPEAL NO. 041846
FILED SEPTEMBER 20, 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 July 2, 2004. The hearing officer resolved the disputed issues by deciding that on _____, the respondent (claimant) did not sustain hearing loss as a compensable injury in the form of an occupational disease and that the claimant timely notified the employer. The appellant (carrier) appealed, arguing that no evidence supports the hearing officer's determination that the claimant timely notified the employer. The appeal file does not contain a response from the claimant. The determination that on _____, the claimant did not sustain hearing loss as a compensable injury in the form of an occupational disease was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

Section 409.001(a)(2) provides, in relevant part, that an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which (in cases of an occupational disease) the employee knew or should have known that the injury may be related to the employment. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier of liability, unless the employer or carrier has actual knowledge of the injury, good cause exists, or the claim is not contested. Section 409.002. Whether the claimant timely notified her employer of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000150, decided March 10, 2000. Although the hearing officer found that there is no causal connection between the claimant's hearing loss and the claimant's work for the employer on and before _____, the hearing officer determined that the claimant timely notified the employer. The claimant testified that he reported his hearing loss on the date of the hearing test, _____. The hearing officer was persuaded that the claimant timely reported his injury. We conclude that the hearing officer's timely notice 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, 176 (Tex. 1986).

We reform Finding of Fact No. 5 to conform to the evidence presented and correct the obvious typographical error. Finding of Fact No. 5 is reformed to read as follows: On _____, the employer had actual notice of the claimant's alleged work-related hearing loss.

We affirm the decision and order of the hearing officer as reformed.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge