

APPEAL NO. 041934
FILED SEPTEMBER 27, 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 20, 2004. With respect to the issues before him, the hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; (2) the claimant had disability beginning March 9, 2004, and continuing through the date of the hearing; (3) the appellant (carrier) did not waive the right to contest compensability of the claimed injury because it timely contested the injury in accordance with Section 409.021 and Section 409.022 of the 1989 Act; and (4) the carrier is not relieved of liability under Section 409.002 of the 1989 Act because the claimant timely notified her employer pursuant to Section 409.001. In its appeal, the carrier contends that the hearing officer erred because the claimant was not in the course and scope of her employment when the injury occurred. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____; that she had disability beginning March 9, 2004, and continuing through the date of the hearing; and that the carrier is not relieved of liability under Section 409.002 of the 1989 Act. These issues are factual matters 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)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier specifically argued that the hearing officer erred in his determination that the claimant sustained a compensable injury because she was not in the course and scope of her employment. The claimed injury occurred as the claimant and some coworkers were returning to their duty station from another part of their employer's offices where they had just received some flu shots. One of the claimant's coworkers fainted and started to fall to the floor. The claimant and another coworker caught her and lowered her to the floor. The claimant asserted that she suffered an injury to her right arm and neck in the incident. The carrier has argued that because the claimant was returning from a voluntary activity, taking a flu shot, she was outside the course and scope of her employment when she assisted her coworker. Texas courts have held that in an emergency, employees may take actions to assist others, and an injury sustained

in the process, is compensable. In Texas Employers' Insurance Association v. Thomas, 415 S.W.2d 18 (Tex. Civ. App.-Fort Worth 1967, no writ history), the Court considered a case where an employee, while driving his employer's vehicle, came upon a traffic accident and stopped to lend assistance. The employee was injured while trying to find the injured party's billfold. The Court held the injury was compensable because the employee "did what was reasonable and what his employer would have expected him to do under the circumstances." In the instant case, the hearing officer found that the injury was compensable and such a determination is not legally insufficient nor against the great weight of the evidence.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN 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 75251-2237.

Gary L. Kilgore
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge