

APPEAL NO. 012707  
FILED DECEMBER 20, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 15, 2001. The hearing officer resolved the disputed issue by concluding that the respondent/cross-appellant (claimant) did not sustain a compensable repetitive trauma injury with a date of injury of \_\_\_\_\_. Both parties have appealed. The appellant/cross-respondent (carrier) challenges the findings of fact that the claimant suffered a hearing loss because of exposure to high noise levels in the workplace. The claimant responds that these findings were supported by the evidence. The claimant appeals arguing that the date of injury was not an issue before the hearing officer and that the evidence presented at the CCH supports a determination that he sustained a compensable repetitive trauma injury with a date of injury of \_\_\_\_\_.

DECISION

Reversed and remanded.

The claimant worked for the employer for 32 years in various capacities. He testified that he realized he suffered a hearing loss when on \_\_\_\_\_, he bought a new alarm clock, took it home, and set it, only to realize that he could not hear the alarm go off. In a record dated May 5, 2001, the claimant's treating doctor, Dr. T, recommended that the claimant "be considered a candidate for the use of binaural hearing aids." An individual hearing summary report is in evidence which lists the results of the hearing tests the claimant has undergone with the employer from March 1981 to September 2000. Dr. L, board certified in occupational medicine, testified at the CCH at the request of the employer. Dr. L testified that he reviewed the hearing tests the claimant underwent with the employer, in addition to the test administered by Dr. T, and that he had been to the plant where the claimant works. In his testimony, Dr. L opined that the results of the test in 1994 shows hearing impairment down into the speech range and that is a point most individuals would notice a change in their hearing. The safety and health manager at the plant where the claimant worked testified that the results of the hearing tests were given to the employees. The claimant testified that no one explained the results to him and that, though he saw on some of the hearing tests his hearing was reported as "worse," he did not know in comparison to what.

A repetitive trauma injury by definition does not occur at a specific or particular time. Section 401.011(36) defines a "repetitive trauma injury" as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." Texas Workers' Compensation Commission Appeal No. 94713, decided July 12, 1994.

The claimant argues that the date of injury was not an issue before the hearing officer. The issue certified from the benefit review conference was "Did the claimant

sustain a compensable repetitive trauma injury, with a date of injury of \_\_\_\_\_?”. The wording of the issue may have caused some confusion in that it tended to restrict a repetitive trauma injury to a specific date. The hearing officer found that the claimant suffered a loss of hearing as a result of the long-term, protracted exposure to high levels of noise in the workplace and that on \_\_\_\_\_, he became aware that he was totally unable to hear some sounds in certain frequencies. However, the hearing officer additionally found that the claimant knew he was suffering from progressive loss of hearing for a number of years and that the loss of hearing may be related to his employment. From these findings it would appear the hearing officer was satisfied that the claimant sustained a repetitive trauma injury in, and during, the course and scope of his employment. The hearing officer appears to reach his decision regarding compensability because the claimant did not establish the date of injury as \_\_\_\_\_.

Section 408.007 provides that “the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.” Establishing a date of injury is an essential matter in resolving the compensability of a claim. Appeal No. 94713, *supra*. However, the Appeals Panel has not required the date of injury found by a hearing officer to be the same as the date alleged by the claimant when the evidence indicates otherwise. Texas Workers’ Compensation Commission Appeal No. 941029, decided September 16, 1994.

If a repetitive trauma injury is shown to have occurred in the course and scope of employment, the fact that the evidence indicates an earlier injury date would not in and of itself defeat an otherwise valid claim. Appeal No. 94713, *supra*, and Texas Workers’ Compensation Commission Appeal No. 94790, decided August 3, 1994. Since we are not able to ascertain if benefits would have been awarded in this claim but for the hearing officer’s incorrect conclusion that the date of \_\_\_\_\_, not having been shown as the “date of injury,” was fatal to this claim, we necessarily remand. We instruct the hearing officer on remand to find a date of injury based upon the evidence in the record.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers’ Compensation Commission’s Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in the Texas Government Code in the computation of the 15-day appeal and response periods.

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

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

Gary L. Kilgore  
Appeals Judge

CONCUR:

Judy L. S. Barnes  
Appeals Judge

Thomas A. Knapp  
Appeals Judge