

APPEAL NO. 033284
FILED FEBRUARY 2, 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 October 29, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease (repetitive trauma); the date of alleged injury is _____; that because the claimant did not sustain a compensable injury, the claimant did not have disability; and that the respondent (carrier) is relieved from liability under Section 409.002, because the claimant failed to timely notify her employer of a work-related injury pursuant to Section 409.001. The claimant appealed, arguing that the hearing officer's compensability and timely notice determinations were in error. The carrier responded, urging affirmance. The date of injury determination has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury. The claimant contends that she sustained an injury to her low back and legs as a result of repetitive motions she made while performing her work activities for her employer. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined by Section 401.011(36). The hearing officer did not err in determining that the claimant did not sustain a compensable occupational disease injury on _____. The injury issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer, 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)). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence on the issue of whether the claimant sustained a job-related injury to her low back and legs. The hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the injury determination on appeal. Pool, *supra*; Cain, *supra*.

Section 409.001(a) provides that, for an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. The carrier contends and the hearing officer found that the claimant gave the employer notice of the claimed injury on April 25, 2003. The date of injury was determined to be _____; therefore, the hearing officer concluded that the carrier is relieved of liability under Section 409.002, because the claimant failed to timely notify her employer of her injury under Section 409.001. We conclude that the hearing officer's determination that the claimant failed to timely notify her employer of her injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain, *supra*. The hearing officer's determination on the timely notice issue is affirmed.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge