

APPEAL NO. 990492

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 February 9, 1999. The issues at the CCH were: did appellant (claimant) sustain a compensable injury on _____, and did claimant have disability. The hearing officer found that the claimant did not sustain a compensable injury and did not have disability. The claimant appeals the factual findings of the hearing officer and asserts that evidence was excluded in error. The claimant requests that the Appeals Panel set a new date for another hearing and/or allow her to introduce new and/or additional evidence. The respondent (carrier) argues that the decision of the hearing officer was supported by the evidence and the hearing officer did not err in excluding a portion of a document which was not exchanged in a timely manner.

DECISION

Affirmed.

The claimant testified that on _____, while working for employer, she sustained an injury to her back, knees, shoulder and rib cage when she slipped on a flattened box and fell. The claimant testified that she was taken to the hospital following the injury and taken off work for three days. The claimant sought medical treatment at the K-Clinic on October 27, 1998, and was examined by Dr. D, who diagnosed a lumbar strain, sacroiliac strain, bilateral knee strain, left shoulder strain and left rib contusion and wrote that claimant's return to work was undetermined. Dr. D released the claimant to return to work light duty on November 11, 1998, but on November 12, 1998, Dr. D indicated that claimant was unable to work. The claimant testified that she had disability from October 24, 1998, through the date of the CCH. The claimant admitted that she had been suffering back and knee pain following the birth of a child about six months prior to _____. The claimant testified that she tried to quit her job on October 14, 1998. A coworker of claimant, who witnessed the incident, testified that he saw the claimant lower herself to the floor into a position that had her left leg in front and right leg behind her, then she called for help.

The claimant asserts on appeal that evidence was excluded. The only document of claimant's excluded by the hearing officer was the last two pages of Claimant's Exhibit No. 1, a medical report dated January 4, 1999. The hearing officer excluded the document on the basis that the document was not timely exchanged and no good cause was shown for failure to timely exchange. The claimant did not have confirmation the document had been mailed or faxed to carrier. The claimant was required to provide the document to carrier no later than 15 days after the benefit review conference and to exchange additional documentary evidence as it became available. Sections 410.160 and 410.161 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13 (Rule 142.13). Evidentiary rulings by the hearing officer on documents which are admitted or not admitted are generally viewed as being discretionary and will be reversed only if there is an abuse of discretion. Texas Workers' Compensation Commission Appeal No. 941414, decided December 6, 1994. In

determining whether there was an abuse of discretion, the Appeals Panel looks to see if the hearing officer acted without reference to any guiding rules or principles. Appeal No. 941414. To obtain reversal of a judgment based upon error of the hearing officer's admission or exclusion of evidence, the appellant must first show that the determination was in fact error, and second, that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992. The hearing officer did not abuse her discretion in not admitting the document and did not commit error in not admitting the document.

The claimant had the burden to prove that she injured herself as claimed on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer as fact finder may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). She resolved contradictions in the evidence against the claimant and concluded that claimant did not meet her burden of proving she sustained a compensable injury. 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 and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the determination of the hearing officer that the claimant did not prove she sustained a compensable injury.

The claimant appealed the hearing officer's finding of no disability. Disability is defined as "Athe inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge