

APPEAL NO. 002891

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 1, 2000, a hearing was held. The hearing officer decided that the respondent (claimant) had sustained a compensable occupational disease, a right carpal tunnel syndrome injury, on _____. The appellant (carrier) appealed, asserting that the hearing officer abused his discretion in admitting the claimant's exhibits and that the hearing officer's decision is against the great weight and preponderance of the evidence. The claimant responded that the hearing officer's decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

We initially address the carrier's appeal of the hearing officer's overruling of the carrier's objection to the admission of the claimant's exhibits. The carrier contends that the hearing officer abused his discretion in admitting the claimant's exhibits because the claimant failed to respond to an interrogatory which requested that the claimant identify each document that the claimant knew was relative to the issue(s) in dispute and every document which the claimant intended to introduce into evidence. The claimant's exhibits were comprised of documents exchanged by the carrier. We have previously held, and the carrier acknowledged on the record, that a reverse exchange of documents is not required. The only objection to the documents was the one related to the claimant's failure to respond to interrogatories. As recently as Texas Workers' Compensation Appeal No. 000220, decided March 22, 2000, we have stated that the failure to answer interrogatories could not be used to exclude evidence that was required to be exchanged. That case, and the earlier cases on which it is based, are controlling in this matter. It matters not that the carrier was required to exchange the documents and is now objecting that the claimant did not identify those documents by responding to the interrogatories. A ruling by a hearing officer to admit or not to admit evidence is discretionary and will be overturned only when there is an abuse of discretion. Texas Workers' Compensation Commission Appeal No. 941414, decided December 6, 1994. The hearing officer, in refusing to exclude the claimant's exhibits, followed the guiding principles which are reflected in Appeal No. 000220, *supra*. The hearing officer did not abuse his discretion in admitting the claimant's exhibits.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. There was conflicting evidence presented at the hearing on the issues. The hearing officer's determinations on the issues are not 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 (Tex. 1986).

The decision of the hearing officer is affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge