

APPEAL NO. 010282

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 23, 2001, a contested case hearing (CCH) was held. The hearing officer determined that (1) the respondent/cross-appellant (claimant) sustained a compensable injury on _____, and (2) the claimant had disability from September 14, 2000, through November 27, 2000. The appellant/cross-respondent (carrier) urges reversal, asserting that the hearing officer erred in refusing to take official notice of the Texas Workers' Compensation Commission's (Commission) claim files and that the determinations are against the great weight of the evidence. The claimant appeals the determination that disability ended on November 27, 2000, and seeks a new decision that disability continued through the date of the CCH.

DECISION

Affirmed.

Compensable Injury

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. The claimant had the burden to prove that she sustained damage or harm to the physical structure of the body, which arose out of and in the course and scope of her employment. There was conflicting evidence presented with regard to this issue. The hearing officer's determination is 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 carrier contends that the hearing officer erred in refusing to take official notice of all Commission files relating to prior claims filed by the claimant. The carrier sought to establish that the claimant was not injured as a result of the incident on _____. We have observed that a hearing officer should not take official notice of entire claim files, but should make exhibits of relevant documents. Texas Workers' Compensation Commission Appeal No. 93103, decided March 22, 1993. When a party seeks to use Commission records in support of its case, we have said that the party, not the hearing officer, has an obligation to search those records and offer evidence therefrom. See Texas Workers' Compensation Commission Appeal No. 982610, decided December 28, 1998. At the hearing in this docket, the hearing officer stated, "If there was anything in the claim files that [the carrier] wanted to obtain you could have done that and proffered those as evidence. If you want to take a recess and go through the computer and see what's available we can do that." The carrier did not request a recess, but stated that it had offered other exhibits that related to those claims as part of the evidence. The hearing officer did not abuse his discretion in refusing to take official notice of the claimant's prior claim files.

Disability

The hearing officer did not err in determining that the claimant had disability from September 14, 2000, through November 27, 2000. Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant alone, even if contradictory to medical evidence. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). 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)). The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, *supra*.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge