APPEAL NO. 010632

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 March 5, 2001. With respect to the issue before him, the hearing officer determined that the appellant's (claimant) correct impairment rating (IR) was 6%. The claimant appeals, attaching a medical document to her appeal, and essentially claims that the hearing officer's decision is against the great weight and preponderance of the evidence and that the hearing officer excluded documents which led to an unfavorable ruling. We will not consider documents attached to the claimant's appeal which were not offered into evidence at the CCH. *See* Texas Workers' Compensation Commission Appeal No. 93943, decided December 2,1993. The respondent (self-insured employer) responds, urging affirmance.

DECISION

Affirmed.

The claimant developed a repetitive stress injury to her neck and low back from working at her workstation for the self-insured employer. Her date of injury was _____. The claimant was treated by Dr. P, a chiropractor, who assigned her an IR of 15% on April 13, 2000, and certified maximum medical improvement (MMI) on that date. Previously, the self-insured employer sent the claimant to be examined by Dr. M, who assigned her a 0% IR. Dr. H, a chiropractor, was selected as the designated doctor by the Texas Workers' Compensation Commission (Commission). On April 24, 2000, Dr. H determined that the claimant had reached MMI and assigned her a 6% IR. Dr. P disagreed with Dr. H's evaluation and the Commission requested a clarification from Dr. H; however, his opinion remained the same.

The self-insured employer objected to the admission into evidence of treatment notes from Dr. P on the grounds that they were not timely exchanged. The ombudsman who assisted the claimant at the hearing explained that she thought the claimant had given her copies of medical records for purposes of review. The ombudsman stated that she believed that the claimant had shared those documents with the self-insured employer. The hearing officer excluded the documents for not being timely exchanged.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) provides that the parties shall exchange documentary evidence no later than 15 days after the benefit review conference. Section 410.161 of the 1989 Act provides that if a party fails to timely exchange documents without good cause, that party may not introduce the evidence. The hearing officer determined there was no good cause for not timely exchanging the documents and excluded them. It has been held that to obtain reversal of a judgment based upon an error in the admission or exclusion of evidence, the appellant must show that the evidentiary ruling was, in fact, error and that the error was reasonably calculated to cause and probably did cause rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio, 1981, no writ). It has also

been held that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The excluded documents were daily treatment notes. The notes were reviewed by Dr. H in his evaluation of the claimant's IR. Under the particular facts of this case and considering all of the evidence, we conclude that the hearing officer did not abuse his discretion in excluding the exhibits. Further, the claimant has not shown that exclusion of the treatment notes was reasonably calculated to cause and probably did cause rendition of an improper decision or that the whole case turned on the excluded exhibits.

Finally, the claimant asserts that the hearing officer's finding of a 6% IR was error. According to Section 408.122(c) the designated doctor's report shall have presumptive weight unless the great weight of the other medical evidence is to the contrary. The response of the designated doctor to the questions of the other doctors indicates that he considered the conclusions upon which they were relying but that he came to a different conclusion. The other doctors' reports represent only a difference in medical opinion. The Appeals Panel has held that a difference in medical opinion is not a sufficient basis for discarding a designated doctor's report. Texas Workers' Compensation Commission Appeal No. 950166, decided March 14, 1995. We are satisfied that the challenged determination of the hearing officer is sufficiently supported by the evidence. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge