APPEAL NO. 011012
FILED JUNE 25, 2001

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 April 25, 2001. With regard to the issues before him, the hearing officer determined that respondent (claimant) sustained a compensable injury in the form of an occupational disease, with a date of injury of _____, and that claimant had disability from September 27, 2000, through the date of the hearing. Appellant (carrier) appeals, contending that the hearing officer erred in admitting certain evidence and that the hearing officer's determinations are against the great weight and preponderance of the evidence. Claimant responds urging affirmance.

DECISION

We affirm.

Carrier contends that the hearing officer erred in admitting Claimant's Exhibit No. 1 into evidence, which was an April 9, 2001, report from claimant's treating doctor, Dr. L. Carrier asserts that this report was not exchanged until April 10, 2001; that claimant sent it by regular mail; and that carrier did not receive it until April 24, 2001. The report from Dr. L concerned the issue of whether claimant sustained a new injury. Claimant testified that she took the peer review report from Dr. H to Dr. L on her next scheduled visit, which was in March 2001 and asked him to respond to it. Dr. L gave her the response on April 9 and she mailed it to the carrier the next day, on April 10.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) provides for the exchange of medical records no later than 15 days after the benefit review conference and "[t]hereafter, parties shall exchange additional documentary evidence as it becomes available." Rule 142.13(c)(2). Untimely exchanged documents may be admitted on a showing of good cause. Rule 142.13(c)(3). To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

There was no evidence admitted at the hearing that showed that claimant intentionally delayed sending Dr. L's report, or that she intended to avoid the requirements for timely exchange. We observe that although carrier noted that Dr. L's report was mailed by claimant on April 10, 2001, it was not received by carrier until 14 days later, which is an unusually long time. While facsimile transmission by claimant to carrier might have been preferable, we perceive no abuse of discretion. We conclude that the hearing officer did not abuse his discretion. We conclude that the hearing officer could determine that

claimant exchanged the report when it became available and that good cause was established in this case.

Next, carrier complains that the hearing officer erred when he allowed the claimant to testify whether Dr. L agreed with the peer review report from Dr. H. Carrier contends that claimant had no medical expertise to answer the question. Whether claimant thought her doctor agreed with Dr. H is of questionable relevance to the issues in this case. The reports of Dr. H and Dr. L are in evidence. We conclude that, even if there was an error in permitting claimant to give her own opinion regarding what Dr. L stated in his report, such did not constitute reversible error. The admission of claimant's testimony was not reasonably calculated to cause and nor did it probably cause the rendition of an improper judgment.

Carrier also appeals the hearing officer's injury and disability determinations on sufficiency grounds. The matters the carrier complained of in this regard all concern credibility and fact issues, which were for the hearing officer to consider. We have reviewed the complained-of determinations and we conclude that they 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, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan Kelley
Appeals Judge

Phillip O'Neill
Appeals Judge