APPEAL NO. 011196
FILED JULY 12, 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 May 7, 2001. With respect to the issues before him, the hearing officer determined that the appellant's (claimant) compensable injury does not include an injury to his left foot/ankle, and that the claimant reached maximum medical improvement (MMI) on _____, with a 10% impairment rating (IR). The claimant appealed asserting the hearing officer inappropriately excluded certain evidence, and on sufficiency grounds. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that certain evidence offered by the claimant at the hearing was inadmissible due to untimely exchange. 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. 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); Texas Workers' Compensation Commission Appeal No. 010632, decided April 25, 2001. 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 Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In this case, we cannot agree that the hearing officer erred in excluding the exhibits based on the claimant's failure to timely exchange them. However, we note that even if error had been shown in the exclusion of the exhibits, it would not rise to the level of reversible error.

The hearing officer also did not err in determining that the claimant's compensable injury does not include an injury to his left foot/ankle. An injury is "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). Whether an injury extends to a particular member of the body is a factual matter for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. In the present case, the hearing officer determined that the claimant did not sustain his burden of proving that his compensable injury extended to the left foot/ankle, noting that the claimant testified that he did not know whether his left foot/ankle problems were the result of the compensable injury, and that the medical evidence likewise did not support the causal

connection. The hearing officer's extent-of-injury determination is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Finally, we consider the claimant's assertion that the hearing officer erred in determining that the claimant reached MMI on June 6, 2000, with a 10% IR. Sections 408.122(c) and 408.125(e) provide that the designated doctor's report of MMI and IR shall have presumptive weight unless the great weight of the other medical evidence is to the contrary. The differences in the dates of MMI and the IRs assigned by the doctors in this case represent differences in medical opinion. The opinions of the doctors other than the designated doctor simply do not rise to the level of the great weight of the other evidence contrary to the designated doctor. Thus, we cannot agree that the hearing officer erred in giving presumptive weight to the designated doctor's report and determining that the claimant reached MMI on June 6, 2000, with a IR of 10%. Texas Workers' Compensation Commission Appeal No. 950166, decided March 14, 1995.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge