APPEAL NO. 011210
FILED JULY 10, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on May 9, 2001. The hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable repetitive trauma injury; that _____, is the date of the injury; that the claimant provided her employer with timely notice of the injury; and that the claimant had disability beginning on March 9, 2001, and continuing through the date of the hearing. The carrier has appealed these determinations on evidentiary sufficiency grounds and also asserts error in an evidentiary ruling. The file does not contain a response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in her resolution of the appealed issues. These issues presented her with questions of fact to resolve and, as the trier of fact, she is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The claimant testified that while working as a sewing machine operator for nearly six years at an apparel manufacturing plant, she had to use her hands to sew 90 fly finish stitches and 90 top pocket stitches on pairs of jeans, per hour; that on _____, she felt left hand pain, self medicated, and thought it would resolve; that the symptoms abated over the Christmas holidays when the plant was closed; and that when she returned to work on _____, she experienced pain, inflammation, and swelling in her left hand and reported her injury to the plant nurse who provided her with a wrist splint and sent her to physical therapy. The thrust of the carrier's case was that the date of injury was _____, and not _____, the same date the claimant reported the injury. The claimant further testified that she has been off work since March 9, 2001, because of her injury. The claimant's medical records reflect that she was diagnosed with tendinitis of the left hand, wrist, and forearm on February 1, 2001, and that Dr. G, an orthopedic surgeon, took her off work on March 9, 2001. We are satisfied that the challenged determinations 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

At the hearing, the carrier first objected to the admission of Claimant Exhibits Nos. 1 through 8, contending they were not exchanged within 15 days after the benefit review conference (BRC). The claimant responded that all but Claimant Exhibit No. 6, a letter from Dr. R, and Claimant Exhibit No. 8, a swatch of denim material containing the fly and top pocket stitches, were exchanged with the person representing the carrier at the BRC, and that she faxed a copy of Dr. R's letter to the carrier as soon as she received it. The hearing officer then said simply that, "hearing all this," she would overrule the objections

and she made no good cause findings for admitting claimant Exhibits Nos. 6 and 8 and admitted all of the claimant's exhibits. On appeal, the carrier urges error in the admission of Claimant Exhibit No. 2, a letter from Dr. G, and Claimant Exhibit No.6, contending that these were available for exchange within 15 days of the BRC and that the hearing officer relied on them. Concerning Exhibit No. 2, the hearing officer could conclude that it was timely exchanged at the BRC and given to the person appearing for the carrier at that proceeding. Concerning Exhibit No. 6, which the claimant stated she faxed to the carrier as soon as she received it from Dr. R, the hearing officer failed to state whether she found good cause for admitting it. It is well settled that hearing officers must make good cause findings on the record if they admit documents which were not timely exchanged. In Texas Workers' Compensation Commission Appeal No. 91064, decided December 12, 1991, the Appeals Panel stated that "[u]nless good cause is shown for not having timely disclosed the report, the report may not be introduced into evidence." and that "under Rule 143.3(c)(3), the hearing officer must make a determination on whether good cause exists for a party not having previously exchanged information or documents to introduce such evidence at the hearing."

Claimant Exhibit No. 6, an undated letter from Dr. R, merely states that he certifies that the claimant "has been seen in his office on November 24, 1998, never exhibiting upper extremities pathology until March 3, 2001, exhibiting left hand pain for which she was referred to Orthopedics." Even if the hearing officer abused her discretion in admitting this exhibit, and certainly a finding of good cause, or not, should have been made on the record, we do not find reversible error for the reason that the claimant testified that she had not had prior problems with left hand pain. The exhibit, while corroborative, is cumulative and we do not believe that its admission probably resulted in an erroneous decision. See 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 26, 20001; and Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge