

APPEAL NO. 011404
FILED AUGUST 2, 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 (CCH) was held on May 21, 2001. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, and that as a result of the compensable injury, the claimant had disability from March 8, 2000, through April 17, 2000, and again from September 3, 2000, through October 31, 2000. The appellant (carrier) appealed, citing abuse of discretion on the part of the hearing officer by removing and disregarding a portion of the carrier's 406-page exhibit and asserting lack of sufficiency of the evidence. The claimant did not respond.

DECISION

Affirmed.

It was undisputed at the CCH that the claimant has a history of low back problems, including spinal surgery in 1983 and 1993. The carrier tendered Carrier's Exhibit No.10, which contains 406 pages of medical records dating back to 1987. After excluding (and disregarding) several pages on relevancy grounds, the hearing officer stated that he was going to keep the remainder of Carrier's Exhibit No.10 and give each page the weight and credibility it deserves on the issues in dispute.

On appeal, the carrier asserts that the hearing officer erred by excluding and discarding certain evidence into the record and as a result, the carrier was not allowed to fully develop its case. Our standard of review regarding a hearing officer's evidentiary rulings on the admission and exclusion of evidence is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in exclusion of evidence, an appellant must first show that the 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 judgment. Texas Workers' Compensation 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). While the hearing officer may have acted heavy-handedly in discarding the excluded pages in Carrier's Exhibit No.10, he still admitted 400 pages of the exhibit and stated that he would give them the weight and credibility they deserved. Those records were offered to show the undisputed fact that the claimant had had prior back problems. There is nothing in the record to indicate that the excluded pages would have changed the result, thereby requiring a reversal on abuse of discretion grounds. A party who submits unorganized stacks of records may run the risk of having relevant information buried in the irrelevant

The carrier next asserts that the hearing officer's decision is against the great weight of the credible medical evidence. Conflicting evidence was presented on the issues of injury

and disability. The Texas Workers' Compensation Commission-appointed required medical examination doctor submitted a report which indicated his opinion that in reasonable medical probability the claimant had a new injury on February 14, 2000, that aggravated his preexisting condition to the lumbar spine. While there was conflicting evidence, the hearing officer is the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer resolved the conflicts and inconsistencies in the evidence against the carrier and he was acting within his role as the fact finder in determining that the claimant sustained his burden of proof on the disputed issues. Nothing in our review of the record indicates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge