

APPEAL NO. 011635
FILED SEPTEMBER 4, 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 June 25, 2001. With respect to the issue before him, the hearing officer determined that the respondent's (claimant) compensable injury of _____, includes injury to her cervical spine, left elbow, and both shoulders, in addition to both wrists. In its appeal, the appellant (carrier) argues that the hearing officer's determination that the claimant's compensable injury extends to her cervical spine, left elbow and both shoulders is against the great weight of the evidence. In addition, the carrier asserts error in the hearing officer's admission of the first five pages of Claimant's Exhibit No. 7. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's _____, compensable injury extends to include her cervical spine, left elbow, and both shoulders. The extent-of-injury issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence, decides what weight to give to the evidence, and determines what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer resolved the conflicts in the evidence of causation in favor of the claimant and he was acting within his province as the fact finder in so doing. Nothing in our review of the record reveals that the challenged determination is so contrary to the great weight of the evidence as to be clearly wrong and manifestly unjust. Thus, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier also asserts that the hearing officer erred in admitting the causation opinion of one of the claimant's treating doctors contained in the first five pages of Claimant's Exhibit No. 7. Specifically, the carrier contends that the hearing officer erred in determining that good cause existed for the claimant's failure to timely exchange that portion of the exhibit. To obtain reversal of a judgment based on the hearing officer's abuse of discretion in the admission 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 judgment. 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). Even if the hearing officer erred in finding good cause for the claimant's failure to timely exchange, we cannot agree that the error would rise to the level of reversible error because that causation opinion was cumulative of other evidence establishing the causal connection in this case, which the hearing officer was free to credit even in the absence of the challenged exhibit.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LEGION INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge