

APPEAL NO. 012294
FILED NOVEMBER 15, 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 September 10, 2001. The hearing officer resolved the disputed issues by concluding that the respondent (claimant) sustained a compensable injury on _____, and had disability beginning on December 13, 2000, and continuing through the date of the hearing. The appellant (carrier) appeals, arguing that the determinations of the hearing officer were against the great weight and preponderance of the evidence, and that no objective medical evidence or testimony was presented to establish any damage or harm to the physical structure of claimant's right elbow caused by the incident on _____. Carrier also asserts that it was an abuse of discretion for the hearing officer to admit Claimant's Exhibits Nos. 4 and 5 because they were not properly exchanged. The appeals file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer abused his discretion in admitting Claimant's Exhibit Nos. 4 and 5, asserting that they were not exchanged until the date of the hearing. We conclude that the hearing officer could have found good cause for the late exchange based on the evidence. Claimant was required to exchange the documents as they became available and the hearing officer could find from the record that he did so. A party who belatedly investigates the facts and then does not disclose known information in order to make further investigation and development does run the risk of having evidence excluded for failure to exchange. Texas Workers' Compensation Commission Appeal No. 960513, decided April 26, 1996. However, a party is not required to create evidence within 15 days of the benefit review conference in order to exchange it. There was no evidence before the hearing officer that showed that claimant intentionally delayed the receipt of the documents in order to avoid the requirements for timely exchange. Accordingly, we conclude that there was no abuse of discretion.

We have reviewed the complained-of determinations regarding injury and disability and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's 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).

We affirm the hearing officer's decision and order.

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

**HAROLD FISCHER, PRESIDENT
3420 EXECUTIVE CENTER DRIVE, SUITE 200
AUSTIN, TEXAS 78731.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge