APPEAL NO. 013204
FILED FEBRUARY 14, 2002

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 December 14, 2001. The hearing officer determined that the respondent's (claimant) compensable injury sustained on _____, extended to include a low back injury. The appellant (self-insured) appeals on grounds that the determination is against the great weight and preponderance of the evidence. The self-insured also asserts that the hearing officer erred by excluding a transcription of the claimant's November 1, 1999, interview by an adjuster, [Self-Insured's] Exhibit No. 12, and the Claimant's Answers to Interrogatories, [Self-Insured's] Exhibit No. 13. The claimant urges affirmance.

DECISION

Affirmed.

EVIDENTIARY POINTS OF ERROR

Initially, we will consider the self-insured's contention that the hearing officer erred in excluding Self-Insured's Exhibit Nos. 12 and 13. The claimant objected to the admission of these exhibits on the grounds that they were not timely exchanged. Finding that the exhibits were not timely exchanged and that good cause did not exist for the failure to do so, the hearing officer sustained the claimant's objections and excluded the exhibits from evidence.

Parties must exchange documentary evidence with each other not later than 15 days after the benefit review conference and, thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). Our standard of review regarding the hearing officer's evidentiary rulings 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 admitting evidence, an appellant must first show that the admission was in fact an abuse of discretion, and also that 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). As to Self-Insured's Exhibit No. 12, the transcription of the interview of the claimant, the self-insured argued that the transcription had just been prepared and was exchanged as soon as it was received. The hearing officer noted that the interview occurred on November 1, 1999, and that the transcription could have been produced earlier and the evidence supports that determination. The hearing officer did not abuse his discretion in refusing to admit this exhibit. As to Self-Insured's Exhibit No. 13, we agree with the self-insured that it was error for the hearing officer to refuse to admit the Claimant's Answers to Interrogatories on the basis that they had not been timely exchanged. The information came from the claimant and it would

have served little purpose to require the self-insured to exchange it again with the claimant before it could be admitted at a CCH. However, we do not conclude that the error was reasonably calculated to cause, and probably did cause, the rendition of an improper judgment. The information excluded was essentially cumulative of the claimant's testimony. We discern no prejudice to the self-insured from exclusion of the evidence.

EXTENT-OF-INJURY ISSUE

The hearing officer did not err in determining that the claimant's compensable injury on _____, extended to include a low back injury. The hearing officer found the claimant to be extremely credible and her testimony about the mechanism of the injury sufficient to meet her burden of proof. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

LC
DIRECTOR OF EMPLOYEE BENEFITS AND RISK MANAGEMENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge