APPEAL NO. 020062
FILED FEBRUARY 15, 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 was held on November 19, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the appellant (carrier) is not relieved from liability because of the claimant's failure to timely notify her employer of the injury; and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy. On appeal, the carrier contends that these determinations are against the great weight and preponderance of the evidence. Additionally, the carrier urges that the hearing officer erred in admitting one of the claimant's exhibits because it was not timely exchanged. The claimant urges affirmance.

DECISION

Affirmed.

The carrier asserts that the hearing officer erred in admitting, as part of Claimant's Exhibit No. 2, a witness statement dated October 29, 2001. The hearing officer admitted that document because she determined that the claimant repeatedly attempted to procure the statement and had good cause for failing to exchange it timely. We find no abuse of discretion in the hearing officer's having so found. Nonetheless, we further note that in order to obtain a reversal for the admission of evidence, the carrier must demonstrate that the evidence was actually erroneously admitted and that "the error was reasonably calculated to cause and probably did cause rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732, 737 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been held that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In this instance, any error in the admission of the claimant's exhibit simply does not rise to the level of reversible error because testimony was elicited from the claimant reflecting the content of the statement in question. As a result, we cannot agree that the admission of the statement was reasonably calculated to, and probably did, cause the rendition of an improper judgment. Accordingly, any evidentiary error was harmless and would not provide a basis for reversing the decision and order on appeal.

The additional matters complained of by the carrier concern credibility and fact issues, which were for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. We have reviewed the complained-of determinations and we conclude that they

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).

The decision and order of the hearing are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge