

APPEAL NO. 020121  
FILED FEBRUARY 25, 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 December 11, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the respondent (carrier) did not waive its right to contest compensability of the claimed injury because it did timely contest compensability of the claimed injury in accordance with Section 409.021; and that the claimant did not have disability. On appeal, the claimant contends that these determinations are against the great weight of the evidence and result from the hearing officer's bias against the claimant based on his criminal record. Additionally, the claimant contends that the hearing officer abused his discretion in admitting one of the carrier's exhibits, which was not timely exchanged. The carrier urges affirmance.

DECISION

Affirmed.

Regarding Carrier's Exhibit No. 7, page 4, which was admitted by the hearing officer over the claimant's objection that it was not timely exchanged, we have frequently held that to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion 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). The hearing officer admitted that document because he determined that the carrier had good cause for not exchanging the document timely. The hearing officer explained that in making this determination, he considered that the carrier attempted to exchange the document timely; that the carrier initially mailed the document to an outdated address; and that upon discovering the mailing error, the carrier mailed it to the proper address as soon as possible. We find no abuse of discretion in the hearing officer's having admitted the document based on these facts.

The claimant asserts that the hearing officer was biased against him because of his criminal record. After reviewing the record, we find no evidence to substantiate this assertion. The other matters complained of by the claimant 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 **GENERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LINDA LEWIS  
c/o SAFECO  
1600 NORTH COLLINS BLVD. #300  
RICHARDSON, TEXAS 75080.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge