

APPEAL NO. 020257
FILED MARCH 19, 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 January 10, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. On appeal, the claimant urges that the hearing officer abused his discretion by excluding the testimony of Dr. S, whose name was timely exchanged with the respondent (carrier) as a potential witness, and, consequently, the decision should be reversed. The carrier asserts in its response that the hearing officer correctly excluded Dr. S's testimony and urges affirmance of the hearing officer's decision.

DECISION

Notwithstanding our finding that the hearing officer abused his discretion in excluding the testimony of Dr. S, we nevertheless affirm the decision and order.

In order 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). In determining whether the hearing officer abused his discretion, the Appeals Panel will look to see if the decision maker acted without reference to any guiding rules or principles. In the present case it is not disputed that the claimant timely exchanged with the carrier the name of Dr. S as a potential witness. The hearing officer ultimately sustained the carrier's objection to the testimony of Dr. S based on the fact that, although Dr. S purportedly treated the claimant, all relevant examination notes were signed by a different doctor within the same clinic where Dr. S practices. The fact that the medical records in question do not bear the signature of Dr. S does not, in and of itself, justify the exclusion of his testimony. It would have been proper for the hearing officer to have allowed the claimant's attorney to establish Dr. S's role in the claimant's treatment through Dr. S's testimony, at which point the hearing officer could then have decided the weight and credibility to be given to the testimony. We agree that in excluding Dr. S's testimony, the hearing officer abused his discretion.

Having determined that the hearing officer abused his discretion by excluding the testimony of Dr. S, we must now determine whether the hearing officer committed reversible error in having done so. Reversible error is not ordinarily shown in connection with rulings on 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, the hearing officer had the benefit of the treatment notes purportedly prepared by Dr. S, which were admitted into evidence. Because of this,

we do not agree that the exclusion of Dr. S's testimony, despite constituting an abuse of discretion, was reasonably calculated to cause and probably did cause the rendition of an improper judgment (Hernandez, *supra*), or that the entire case would have turned on his testimony (Middleman, *supra*). Accordingly, no sound basis exists for reversing the decision and order on appeal.

For the foregoing reasons, the decision and order of the hearing officer are affirmed.

The true corporate name of the carrier **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Chris Cowan
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge