

APPEAL NO. 020377
FILED MARCH 28, 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 January 16, 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 contends that these determinations are against the great weight of the evidence. Additionally, the claimant contends that the hearing officer erred in excluding Claimant's Exhibit No. 7 and in denying the claimant's request for continuance. The respondent (carrier) urges affirmance and asserts that the hearing officer did not abuse her discretion in excluding the aforementioned exhibit and denying the continuance.

DECISION

Affirmed.

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 her 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, the claimant did not timely exchange Claimant's Exhibit No. 7, which is the written statement of a witness, with the carrier and the hearing officer found that the claimant did not have good cause for failing to do so. The evidence reflects that although the claimant was aware of the identity of the witness as early as August 2001, the statement was not obtained until after the deadline for timely exchanging evidence. Given these facts, we do not find that the hearing officer abused her discretion in excluding the witness's statement.

Upon the hearing officer's exclusion of Claimant's Exhibit No. 7, the claimant made an oral motion for continuance. Pursuant to Section 410.155 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.10 (Rule 142.10), the Texas Workers' Compensation Commission may continue a CCH at a party's request upon a showing of good cause. When a motion for a continuance is made during a hearing, the moving party must also "show that a continuance will not prejudice the rights of the other parties." Rule 142.10(c)(3).

We review cases involving rulings on motions for continuance made during the hearing under an abuse of discretion standard. In Texas Workers' Compensation Commission Appeal No. 91076, decided December 31, 1991, we noted that a party seeking a continuance must not only establish good cause, but also that the continuance

would not "prejudice the rights of the other party." Although the claimant asserted at the hearing that her case would be prejudiced by not granting the motion for continuance, no evidence was offered to establish that the carrier's rights would not be prejudiced by continuing the hearing for a later date. We have also stated that due diligence by the party requesting the continuance is a factor to be considered in finding whether good cause existed to grant the request. The excluded statement, which was the basis for the motion for continuance, was made by a witness whose identity had been known by the claimant well in advance of the hearing. Despite this, the witness was not designated by the claimant as one who would potentially testify, nor is there any indication that the claimant attempted to subpoena the witness to compel her attendance at the hearing. Under the facts of this case, we find no abuse of discretion in the hearing officer's denial of the claimant's motion for continuance.

With regard to the hearing officer's compensability and disability determinations, we have reviewed the matters complained of by the claimant on appeal and conclude that the hearing officer's decision is 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 officer are affirmed.

The true corporate name of the carrier **NORTH AMERICAN SPECIALTY INSURANCE** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge