

APPEAL NO. 020489  
FILED APRIL 16, 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 February 5, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable occupational disease, and that she had disability from June 25 through July 23, 2001, and again from July 30, 2001, through February 5, 2002. The appellant (carrier) appeals the injury and disability determinations on sufficiency of the evidence grounds. The carrier also appeals an adverse evidentiary ruling which kept a peer review report from being admitted into evidence. The claimant replies, urging affirmance of the hearing officer's determinations and evidentiary ruling.

DECISION

Affirmed.

The hearing officer excluded a peer review report from Dr. H, which was submitted by the carrier, because it was not timely exchanged. The carrier argues that it was diligent in its efforts to obtain the report, that the report was only received the day before the CCH, and that it was provided to the claimant's attorney as soon as it was received. The hearing officer noted that the report was the type of report which could have been prepared before the benefit review conference was held, and concluded that there was no good cause shown for the late exchange of the report. We do not find the hearing officer's ruling to be an abuse of discretion, nor can we say that the hearing officer acted without reference to guiding rules and principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). This objection is without merit.

There was conflicting evidence presented on the issues of whether the claimant had a compensable occupational disease injury and whether there was disability. 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

**ROBERT PARNELL  
8144 WALNUT HILL LANE, SUITE 1600  
DALLAS, TEXAS 75231-4813.**

---

Michael B. McShane  
Appeals Judge

CONCUR:

---

Susan M. Kelley  
Appeals Judge

---

Terri Kay Oliver  
Appeals Judge