

APPEAL NO. 020617  
FILED APRIL 24, 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) on remand was held on February 21, 2002. In Texas Workers' Compensation Commission Appeal No. 012924, decided January 22, 2002, the Appeals Panel remanded the case back to the hearing officer to further develop the record and make findings of fact whether good cause existed in the failure to timely exchange a statement, and whether the respondent (claimant) exercised diligence in exchanging the coworker's ("witness") statement.

The hearing officer did as directed in conducting a hearing on remand and while not making explicit findings of fact the hearing officer did comment on the evidence that the claimant had exercised due diligence and that there was good cause to admit the statement of the witness. Otherwise, the hearing officer reissued his decision that the claimant sustained a compensable low back and right hip injury and had disability from June 23 through July 9, 2001.

The appellant (carrier) again appeals, referencing the transcript of the CCH at length, and argues that the name of the witness should have been exchanged earlier, that the statement should be excluded, and that the claimant did not sustain a compensable injury and did not have disability. The claimant responds, urging affirmance.

DECISION

Affirmed.

The principal point of dispute is a witness statement which says that the witness heard the claimant fall and when he turned around saw the claimant on the floor. At the original CCH, the hearing officer overruled the carrier's objection on failure to timely exchange without, making a finding of good cause. Pursuant to the remand, the hearing officer conducted a CCH on remand. After listening to testimony and representations by the parties, the hearing officer explained in some detail his reasoning (some of which is quoted in the carrier's appeal). That reasoning is summarized in the hearing officer's Statement of the Evidence.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c)(1)(D) (Rule 142.13(c)(1)(D)) provides that no later than 15 days after the benefit review conference (BRC) (in this case the parties agree that the BRC was held on September 6, 2001), the parties shall exchange "the identity and location of any witness known to have knowledge of relevant facts" (emphasis added). Rule 142.13(c)(3) provides for documentary evidence not previously exchanged to be admitted upon a showing of good cause. In this case, the claimant and his father made known to the carrier in a statement taken on July 26, 2001, that two other workers may have seen the accident. Later, after the carrier denied the claim and specifically challenged the claimant's credibility, the claimant sought to locate

these potential witnesses and determine what knowledge, if any, they had about the accident. At that point, the claimant did not know who the witness or witnesses were or what, if any, knowledge they had of the relevant facts. As the claimant argued, one could not exchange the name of a witness when they do not know the name of that person or if that person is indeed a witness. After “continuously” going to the job site, one witness with knowledge was located on October 3, 2001, and his two-line statement taken. The hearing officer summarized what occurred next, stating:

The date written on the statement was October 3, 2001. The Claimant and his Attorney explained that they knew there were two possible witnesses, which the Carrier was told on July 26, 2001; but they did not know [Mr. P] name until late September. The Claimant looked for him at the work site, finally finding him on October 3 and obtaining the statement. The Attorney was able to reach [Mr. P] by telephone on October 8, confirmed the statement with him, and sent it to the Carrier. This Hearing Officer found due diligence and good cause to admit the statement into evidence.

We review a hearing officer’s evidentiary rulings on an abuse of discretion standard; that is, whether the hearing officer acted without reference to any guiding principles. Texas Workers' Compensation Commission Appeal No. 92054, decided March 27, 1992; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We are satisfied that the hearing officer has complied with the remand and that his ruling was not an abuse of discretion.

Regarding the issues of injury and disability, the carrier's appeal attacks the credibility of the claimant and his father. However, the weight and credibility that is given to the evidence is within the sole judgment of the hearing officer, who determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer’s determinations 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 hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 N. ST PAUL STREET  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Michael B. McShane  
Appeals Judge