

APPEAL NO. 020622
FILED MAY 7, 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 February 26, 2002. The hearing officer resolved the disputed issues before him by determining that the respondent (claimant) sustained a compensable injury on _____, and that he had disability beginning on September 18, 2001, and continuing through December 14, 2001. The appellant (carrier) appealed, asserting evidentiary error and lack of sufficient evidence to support the decision. There is no response from the claimant.

DECISION

Affirmed.

On appeal, the carrier asserts that the hearing officer erred in excluding a one-page summary of the recorded statement taken from the claimant. The entire statement was not offered into evidence. It has been held that to obtain a reversal of a judgment based upon an error in the admission or exclusion of evidence, the appellant must show that the evidentiary ruling was, in fact, error, and that the error was reasonably calculated to cause and probably did cause rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). The excluded document was largely cumulative of the claimant's testimony and the carrier has failed to show that its exclusion was reasonably calculated to cause and probably did cause rendition of an improper judgment. Thus, any error in the exclusion of the carrier's evidence does not rise to the level of reversible error.

The hearing officer did not err in deciding that the claimant sustained a compensable injury on _____, and had disability resulting from the compensable injury from September 18, 2001, through December 14, 2001. The hearing officer determined that the claimant's account of the injury was credible. 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. The hearing officer's injury and disability determinations are not so against the great weight of the evidence as to compel their reversal on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); 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 **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**TIM KELLY
AIG
675 BERING, 3RD FLOOR
HOUSTON, TEXAS 77057.**

Daniel R. Barry
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge