APPEAL NO. 020842
FILED MAY 15, 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 March 6, 2002. The hearing officer determined that, in accordance with the Texas Workers' Compensation Commission (Commission)-selected designated doctor's amended report, the appellant's (claimant) correct impairment rating (IR) is 10%. On appeal, the claimant expresses disagreement with this determination and urges that the 38% IR assigned by the treating doctor should be adopted. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant attached numerous documents to her appeal, some of which were offered but not admitted into evidence at the hearing, and others that are offered for the first time on appeal. In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will only consider the evidence admitted at the hearing. We will not generally consider evidence not submitted into the record, and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the documents that the claimant attached to her request for review which were not offered into evidence at the hearing.

Regarding the exclusion of Claimant's Exhibit Nos. 15, 17, and 20 for lack of timely exchange, we have frequently held that to obtain reversal of a judgment based upon the hearing officer's 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). We find no abuse of discretion in the hearing officer's application of the exchange of evidence rules.

The hearing officer did not err in affording presumptive weight to the designated doctor's amended IR certification. Section 408.125(e) provides:

> If the designated doctor is chosen by the commission, the report of the designated doctor shall have presumptive weight, and the commission shall base the [IR] on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the medical evidence contradicts the [IR] contained in the report of the designated doctor chosen by the commission, the commission shall adopt the [IR] of one of the other doctors.

The Commission adopted Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), effective January 2, 2002. Rule 130.6(i) provides that a designated doctor's response to any Commission request for clarification is considered to have presumptive weight, as it is part of the designated doctor's opinion. Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. The Appeals Panel has stated that presumptive weight will be given to the most recent, valid amendment of the designated doctor. Texas Workers' Compensation Commission Appeal No. 020457, decided April 5, 2002.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is a factual determination for the hearing officer. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. 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 overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We have reviewed the matters complained of by the claimant and conclude that the hearing officer’s decision is supported by sufficient evidence.

We affirm the decision and order of the hearing officer.

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

C. T. CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge