

APPEAL NO. 021302
FILED JUNE 27, 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 May 2, 2002. The hearing officer resolved the disputed issue by concluding that the compensable injury of _____, does include an injury to the left elbow in the form of cubital tunnel syndrome (CuTS) and to the left wrist in the form of carpal tunnel syndrome (CTS). The appellant (self-insured) appeals, arguing that the hearing officer improperly admitted certain medical evidence and that the respondent (claimant) did not prove that her compensable injury extends to her left CTS and CuTS. In her response, the claimant contends that all exhibits were properly admitted and that the determinations of the hearing office are supported by legally sufficient evidence and are not against the great weight and preponderance of the evidence.

DECISION

Affirmed.

The self-insured objected to the admission of certain medical records on the basis that they were not timely exchanged and that the records were created to assist the claimant at the CCH. The claimant argued that the exhibits in question were exchanged immediately upon receipt and that they were generated in the course of the claimant's regular medical treatment and examination. The hearing officer admitted the exhibits noting that a fifteen-day exchange was made timely and the rule allows for supplementation of documents generated at a later date.

Parties must exchange documentary evidence with each other not later than 15 days after the benefit review conference and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §142.13(c) (Rule 142.13(c)). Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. 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 there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). 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.

Regarding the extent-of-injury issue, the hearing officer did not err in reaching the complained-of determinations. The issue involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations on extent of injury are 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 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge