APPEAL NO. 021515
FILED JULY 26, 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 May 30, 2002. The hearing officer resolved the disputed issues by determining that the appellant (claimant) was in the course and scope of his employment when he was involved in a motor vehicle accident on _____; that the claimant did not notify the employer of the injury within 30 days of its occurrence and, consequently, the respondent (carrier) is relieved from liability; and that the claimant did not have disability. On appeal, the claimant contends that the evidence does not support the notice and disability determinations. Additionally, the claimant argues on appeal that the hearing officer erred in excluding one of his exhibits. The respondent (carrier) urges affirmance.

DECISION

Affirmed as reformed.

Regarding the exclusion of Claimant's Exhibit No. 2 for lack of timely exchange, we have frequently held that to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the exclusion of evidence, an appellant must first show that the 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). The claimant contended, and the carrier disputed, that the document in question was exchanged at the benefit review conference (BRC). The hearing officer noted that under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13 (Rule 142.13), the purported exchange at the BRC would be insufficient and that the claimant was obligated to make his exchange of documentary evidence by mail *after* the BRC and provide proof of the mailing. This is an incorrect interpretation of Rule 142.13(c)(1), which provides that "parties shall exchange" documentary evidence "no later than 15 days after the [BRC]." The Appeals Panel has held that documents that are actually exchanged or made available to both parties at the BRC need not be reexchanged within 15 days after the BRC. Texas Workers' Compensation Commission Appeal No. 941048, decided September 16, 1994; Texas Workers' Compensation Commission Appeal No. 992764, decided January 24, 2000; Texas Workers' Compensation Commission Appeal No. 000248, decided March 15, 2000. Although the hearing officer incorrectly applied the rule, her exclusion of the exhibit does not constitute reversible error as there is no indication that the exclusion of the information contained in the exhibit probably did cause the rendition of an improper decision.

The hearing officer determined that the claimant did not give timely notice to the employer of the injury and that he did not have disability. Conflicting evidence was

presented on both of these issues. 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 of 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). 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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the decision of the hearing officer.

The claimant takes issue with the hearing officer's Finding of Fact No. 9, wherein she finds that the claimant was released to return to work on or about November 1, 2001. We agree with the claimant that there is no evidence to support that date. The claimant testified that he began looking for work on or about November 1, 2001. Accordingly, the above-referenced portion of Finding of Fact No. 9 shall be stricken.

The decision and order of the hearing officer are affirmed as reformed.

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

CORPORATION SERVICE
800 BRAZOS, SUITE 330
ONE COMMODORE PLAZA
AUSTIN, TEXAS 78701.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge