

APPEAL NO. 021661
FILED AUGUST 6, 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 June 13, 2002. The hearing officer resolved the disputed issue by concluding that the compensable injury sustained on _____, includes a strain injury to the neck, but does not include a diagnosis of C4-5 disc bulge and reflex sympathetic disorder (RSD). The appellant (claimant) appealed on evidentiary sufficiency grounds. The respondent (self-insured) filed a response, urging affirmance. The self-insured also asserts that the hearing officer abused his discretion by allowing the claimant to call Dr. C to testify as a witness when the claimant had not designated Dr. C as a witness within 15 days of the benefit review conference.

DECISION

Affirmed.

The hearing officer omitted the name of PR, the nurse case manager, from the witness list; she testified on behalf of the self-insured.

Regarding Dr. C, when advised during the CCH that Dr. C would be called as a witness, the self-insured asserted that it did not object to his testimony, but rather objected because he had not prepared any written reports prior to the CCH. The hearing officer ruled that he would not exclude the testimony, but would consider the fact that there were no reports from Dr. C when assigning weight to his testimony. At the end of Dr. C's testimony, the self-insured moved to exclude his testimony on the bases that, as a chiropractor, he was not qualified to, and does not, in fact, treat RSD patients; he did not prepare any written records of the 12 office visits he had with the claimant; and he does not use the Texas Workers' Compensation Commission-prescribed forms. The hearing officer denied the motion to exclude the testimony of Dr. C, again stating that the objections went to the weight of the testimony, not to its admissibility. The objection now asserted by the self-insured was never articulated at the CCH and we will not entertain it for the first time at this point in the proceedings.

The parties stipulated that the claimant sustained a compensable injury on _____. The disputed issue was whether that injury extended to include a diagnosis of C4-5 disc bulge and RSD. Extent of injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. There was conflicting evidence on the question of the extent of the injury. 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 of the evidence and determines what facts have been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We conclude that the hearing officer's decision is

supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and 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 certified self-insured)** and the name and address of its registered agent for service of process is

MM
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge