

APPEAL NO. 021949
FILED SEPTEMBER 17, 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 July 8, 2002. The hearing officer determined that the respondent's (claimant) compensable left knee injury (a torn meniscus) extends to and includes osteoarthritis of the left knee.

The appellant (carrier) appeals, asserting a medical report in one of the claimant's exhibits had been improperly admitted over its objection as to lack of timely exchange and otherwise that the hearing officer's decision is against the great weight of the medical evidence. The file does not contain a response from the claimant.

DECISION

Affirmed.

Regarding the objected-to medical report, the report is dated June 7, 2002, and was exchanged on June 19, 2002. The claimant's attorney represented that she requested the report as soon as she was retained and that she exchanged it as soon as she received it. In order to obtain a reversal for the admission of evidence, the carrier must demonstrate that the evidence was actually erroneously admitted 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, 737 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been held that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In this case we cannot conclude that the hearing officer's ruling was an abuse of her discretion and the doctor's position was known to the parties. No reversible error was committed.

Regarding whether the compensable injury included an aggravation of a preexisting osteoarthritis condition the medical evidence was in conflict. Each party argued that its medical evidence was more persuasive giving reasons therefore. The hearing officer reviewed the record and decided what facts were established. We concluded that the hearing officer's determinations are not 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, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**JOSEPH KELLEY-GRAY
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica Lopez
Appeals Judge