

APPEAL NO. 021970  
FILED SEPTEMBER 18, 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 11, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury to her low back on \_\_\_\_\_, and that she had disability from \_\_\_\_\_, through February 22, 2002, but did not have disability from February 23 through July 11, 2002. The appellant (carrier) appealed, asserting that the hearing officer committed reversible error by excluding the testimony of the employer's representative and attempting to coerce a settlement of the disputed issues from the parties. The carrier additionally asserts that the claimant failed to meet her burden of proof. The claimant responded, urging affirmance.

DECISION

Affirmed.

The carrier asserts that the hearing officer erred by excluding the testimony of the employer's representative because of the carrier's failure to timely disclose the witness. We have previously determined that the employer's representative can testify and present evidence even if not disclosed. See Texas Workers' Compensation Commission Appeal No. 92410, decided September 25, 1992. That decision also indicates that employer evidence should be put on after the carrier has rested and a concurring opinion emphasizes that, while an employer's right to testify exists separate and apart from the carrier's case, Section 409.011(b) does not indicate that it can be used by a carrier to circumvent procedural restrictions imposed on it in the presentation of its case. This notion was iterated in Texas Workers' Compensation Commission Appeal No. 941412, decided December 5, 1994. The situation here is factually distinct from that in Appeal No. 92410, *supra* in that, in the present case, the carrier sought to call the employer representative as its witness. Chief Judge Sanders, in his concurring opinion, specifically stated that Appeal No. 92410 should not be overread to cover this situation. We find no abuse of discretion on the part of the hearing officer in the present case for excluding the testimony of the employer's representative for failure to timely disclose the witness. See *also* Texas Workers' Compensation Appeal No. 960998, decided July 15, 1996.

We further find that it was not reversible error for the hearing officer to go off the record to encourage and allow the parties time to attempt to reach an agreement in this matter.

As to the merits of the case, we have reviewed the complained-of determinations and find that the hearing officer's Decision and Order is supported by sufficient evidence to be affirmed. The issues presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section

410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issues. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL  
8144 WALNUT HILL LANE, SUITE 1600  
DALLAS, TEXAS 75231-4813.**

---

Michael B. McShane  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge