

APPEAL NO. 022062  
FILED SEPTEMBER 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 July 11, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that the claimant did not have disability. The claimant appealed, asserting that the hearing officer erred in admitting Carrier's Exhibit Nos. 5 and 6, and by allowing certain witnesses to testify at the CCH. The claimant also argued that the evidence was sufficient to show that he sustained a compensable injury and had disability. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant objected to the admission of Carrier's Exhibit Nos. 5 and 6 on the basis that the exhibits contained, respectively, the statements of six and three employees of the employer which were obtained from the employees under circumstances which would "irreversibly taint" the statements. The claimant asserts that all of the employees who were to give statements were present in the same room, heard each other testify, and had to provide their statements in the presence of the employer's vice-president/head of the workers' compensation program. The objection was also extended to the live testimony of several of the same individuals who were called as witnesses at the CCH by the carrier. There were no objections made concerning a lack of timely exchange or notice of the exhibits or witnesses. The hearing officer admitted the exhibits and permitted testimony from all the witnesses called. In admitting the exhibits, and permitting the testimony, the hearing officer indicated that he viewed the objections as going to the credibility of the testimony.

The Appeals Panel has held that 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. *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). In this case, we are satisfied that the hearing officer was well aware of the claimant's concerns about the possibility that the witnesses' testimony was tainted, and that he knew and exercised his function of assessing the credibility of the evidence and testimony. The witnesses who testified were under oath and subject to cross-examination. Our review of the exhibits and the

tapes of the CCH reveals that each of the witnesses were questioned about their own observations and interactions with the claimant around the time of the alleged injury, that there was no apparent matching of testimony, and that the testimony provided at the CCH expanded upon and fleshed out details more fully than was done in the written statements. We conclude that there was no abuse of discretion in admitting the exhibits or in permitting the witnesses to testify.

Whether the claimant sustained a compensable injury and had disability are factual questions for the fact finder to resolve. It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

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

**JEFF W. AUTREY  
400 WEST 15TH STREET, SUITE 710  
FIRST STATE BANK TOWER  
AUSTIN, TEXAS 78701.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Veronica Lopez  
Appeals Judge