

APPEAL NO. 022071
FILED SEPTEMBER 25, 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 23, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury to his right foot or ankle on about (date of first injury); that the claimant had not sustained a compensable injury to his left foot or ankle on (date of second injury); that the alleged right foot or ankle injury does not extend to or include a left foot or ankle injury; that the claimant failed' without good cause, to give timely notice to his employer of the claimed injury; and that the claimant did not have disability.

The claimant appealed the hearing officer's findings as not being supported by the evidence; asserted error that a witness and the witness's statement had been excluded; and for the first time objected that more than one attempt was made to call the respondent's (carrier) witness by telephone. Also attached to the claimant's appeal is the claimant's social security statement. The carrier responds, urging affirmance.

DECISION

Affirmed.

Claimant's witness, and a statement offered, were excluded because the witness's identity and the statement had not been timely exchanged. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). The hearing officer did not err in excluding this evidence. The claimant also for the first time objected on appeal that the first attempt to call the carrier's witness (the claimant's supervisor) resulted in a lady advising the hearing officer that the witness was not there but that he was expected in five minutes. Upon calling back a few minutes later the witness was present and testified. We review the hearing officer's rulings on the admission and exclusion of evidence on an abuse of discretion standard. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). The hearing officer did not abuse his discretion in calling the witness. The claimant's social security statement submitted for the first time on appeal was not considered.

On the merits, the claimant testified that he was a dishwasher and cook in the employer's cafeteria and injured his right foot and ankle on _____, pushing a "slop bucket" with his foot. As the hearing officer notes there were serious discrepancies between the claimant's testimony and the history recited in the medical reports. The claimant's testimony that he reported the injury to his supervisor on the date of the injury is directly contradicted by the supervisor. The hearing officer found that the right foot and ankle condition was not a producing cause of the left foot and ankle condition and that the claimant had not sustained a new left foot/ankle injury on _____.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude 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 **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica Lopez
Appeals Judge