

APPEAL NO. 022099
FILED SEPTEMBER 30, 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 24, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable mental trauma injury with a date of injury of _____; that the claimant timely notified her employer as required by the 1989 Act; and that the claimant has had disability from September 8, 2000, until March 5, 2001. The appellant (carrier) appeals, arguing that the hearing officer erred in allowing the claimant to add the issue of the date of injury; that the hearing officer improperly admitted the medical records of Dr. L and Dr. T; that the claimant did not meet her burden of proving that she sustained a work-related mental trauma injury on either _____, or _____; that the claimant did not timely report her injury; and that she has not sustained any disability. The claimant responded, urging affirmance.

DECISION

Affirmed.

We first address the carrier's contention that the hearing officer erred in allowing the claimant to change the issues to be presented at the CCH after finding good cause. On appeal the carrier asserts that the hearing officer erred in adding the date of injury issue and changing the wording of the compensable injury issue from "Did the claimant sustain a compensable mental trauma injury on or about _____?" to "Did the claimant sustain a compensable mental trauma injury." Section 410.151(b) of the 1989 Act provides that an issue not raised at the benefit review conference (BRC) may not be considered at the CCH unless the parties consent to the additional issue or the hearing officer finds good cause for adding the issue. The hearing officer found that good cause existed to add the date of injury issue and revise the compensable injury issue. We review such action on an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 991851, decided October 12, 1999. We find that the hearing officer did not err in adding the date of injury issue and revising the compensable injury issue because the claimant's position was clear at the BRC that the claimant alleged she sustained a compensable mental trauma injury due to an armed bank robbery that occurred while she was at work on or about _____.

The carrier also alleges that the hearing officer erred in admitting the medical records of Dr. L and Dr. T because both doctors refused to release the claimant's medical records to the carrier pursuant to a subpoena duces tecum without a release signed by the claimant. The carrier argues that the claimant refused to sign a medical release at the BRC. The records admitted into evidence were timely exchanged but the carrier argues it was improper to admit the records because they were not the complete records. The hearing officer offered to continue to the hearing to allow the carrier time

to obtain the complete medical records from the two doctors; however, the carrier objected to any further continuance of this matter. The initial CCH scheduled was continued due to a medical emergency of the claimant's attorney. 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. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We do not find the hearing officer's ruling to be an abuse of discretion, nor can we say that the hearing officer acted without reference to guiding rules and principles.

The claimant had the burden to prove that she sustained a compensable mental trauma injury; that she timely notified her employer of her claimed injury under Section 409.001, or had good cause for not timely reporting the injury; and that she had disability as defined by Section 401.011(16). The disputed issues involved factual determinations to be made by the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations are supported by sufficient evidence and that they are 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, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge