

APPEAL NO. 022754  
FILED DECEMBER 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 (CCH) was held on September 24, 2002. The hearing officer resolved the disputed issues by deciding that the respondent/cross-appellant (claimant) sustained an injury on \_\_\_\_\_, to at least his right hip; that the claimant had disability from June 1, 2002, and continuing through the date of the CCH; and that the appellant/cross-respondent (carrier) waived the right to dispute compensability of the claim by not adequately disputing within 7 or 60 days. The carrier appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence and that the hearing officer abused his discretion in not granting a motion for continuance and in admitting several of the claimant's exhibits as evidence. The claimant cross-appealed the hearing officer's determination that the carrier first had written notification of the claimant's injury on July 15, 2002. The carrier and the claimant both responded to the other party's appeal.

DECISION

Reversed and rendered in part; affirmed in part.

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The hearing officer did not err in determining that the carrier first had written notification of the claimant's injury on July 15, 2002. Review of the record indicates that the carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) lists that it received written notice of the claimant's injury on July 15, 2002, and it disputed the injury on July 17, 2002. The determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is 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 erred in determining that the carrier waived the right to dispute compensability of the claim by not adequately disputing within 7 or 60 days. The carrier's TWCC-21 states that:

Carrier respectfully denies workers compensation of this claim based on the following reasons: 1) Carrier denies workers comp injury in that claimant was not injured in course and scope of job duties. 2) Claimant may have been intoxicated at time of injury. 3) Claimant initially told

employer he did not know how he injured himself. 4) Carrier also denies claimant's disability.

The hearing officer did not explain in his decision why the carrier did not adequately dispute compensability. The evidence shows that the carrier received written notice of the claimed injury on July 15, 2002, and it disputed compensability on July 17, 2002. We do not discern any problem with the adequacy of the reasons that the carrier asserted for its dispute of the claim; thus, the carrier did not waive its rights to dispute compensability. See Section 409.021 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §124.1 (Rule 124.1).

### **INJURY AND DISABILITY**

Whether the claimant sustained a compensable injury and had disability were factual questions for the hearing officer to resolve. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

### **EVIDENTIARY MATTERS**

The carrier contends that the hearing officer abused his discretion in admitting Claimant Ex. Nos. 1, 9, 10, 11 and 15, as well as denying the carrier's motion for continuance. Our standard of review regarding the hearing officer's rulings on evidentiary matters is one of abuse of discretion. Texas Worker's Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain a reversal of a judgment based upon the hearing officer's abuse of discretion in evidentiary matters, an appellant must first show that the admission 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. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). We have reviewed the record and we find no abuse of discretion in the hearing officer's admittance of the claimant's exhibits or denial of the carrier's motion for continuance.

The hearing officer's determination that the carrier waived the right to dispute compensability of the claim by not adequately disputing within 7 or 60 days is reversed and a new decision is rendered that the carrier did not waive the right to dispute compensability of the claim because it did adequately dispute within 7 or 60 days. The hearing officer's injury and disability determinations are affirmed.

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

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Veronica Lopez  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge