

APPEAL NO. 030149
FILED MARCH 10, 2003

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 November 25, 2002, with the record closing on December 9, 2002. Appellant 2 (claimant) did not appear at the CCH. The hearing officer determined that the claimant did not have good cause for failing to appear at the scheduled CCH on November 25, 2002; that the claimant did not sustain an injury, including a bilateral hands and wrists injury on _____; and that the claimant did not sustain a compensable injury, including a compensable repetitious trauma injury in the form of an occupational disease to the claimant's body, including the claimant's bilateral hands and wrists that arose out of and in the course and scope of her employment with the employer on _____, or any other date. Appellant 1 (subclaimant) appealed the hearing officer's injury determination on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance. The file does not contain a response from the claimant. The hearing officer's determination that the claimant did not have good cause for failing to appear at the scheduled CCH on November 25, 2002, is unappealed and has become final. Section 410.169.

DECISION

Affirmed.

A CCH was held in this matter on November 25, 2002. The claimant failed to appear. The record reflects that the hearing officer sent the claimant a 10-day show cause letter on November 26, 2002, and that the claimant failed to respond.

On appeal, the subclaimant asserts that the hearing officer erred in admitting some of the evidence the carrier offered into evidence. To obtain a reversal on the basis of admission or exclusion of evidence, it must be shown that the ruling admitting or excluding the evidence was error and that error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been stated that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). Under the facts of this case, we cannot say that the hearing officer committed reversible error by allowing the carrier to present the complained-of evidence despite its failure to respond to the subclaimant's interrogatories. We conclude that the subclaimant has not shown that the error, if any, in the admission of the complained-of evidence amounted to reversible error.

We have reviewed the complained-of determination and find that the hearing officer's Decision and Order is supported by sufficient evidence to be affirmed. The

disputed issue presented a question 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 Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issue. 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 Ins. Co., 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 determination is 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 that determination on appeal. 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Daniel R. Barry
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge