

APPEAL NO. 030276
FILED MARCH 26, 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 January 6, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the course and scope of employment on _____, or any other date; that the claimant failed to timely report his alleged injury; that the claimant did not have good cause for failing to timely report the alleged injury; that the respondent (carrier) is relieved of liability because of the claimant's failure to timely notify his employer of the alleged injury; and that the claimant had no disability because the claimant had no compensable injury. The claimant appeals those determinations, essentially contending that the determinations are against the great weight of the evidence and that the hearing officer erred in excluding certain evidence offered by the claimant while admitting other evidence and testimony offered by the carrier. There is no response from the carrier contained in our file.

DECISION

Affirmed.

We shall first deal with the claimant's procedural complaints. The carrier had objected to some of the claimant's exhibits on the grounds that the documents had not been timely exchanged. The claimant argues that he did not receive the documents until the date of the CCH because he had the documents sent directly to the Texas Workers' Compensation Commission (Commission) at the request of a Commission employee. The claimant testified that he believed that Commission employees had exchanged the documents with the carrier and that he also believed the documents were exchanged with the carrier at the benefit review conference (BRC).

Parties must exchange documentary evidence with each other not later than 15 days after the BRC and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). A party cannot escape their duty to timely exchange documents by contending that they relied on someone else to perform that task. Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. 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. Texas Workers' Compensation

Commission Appeal No. 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). It was a factual issue for the hearing officer to determine whether or not the excluded documents were in fact timely exchanged. 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 also indicates that he was inappropriately questioned about a document that was eventually excluded from evidence. However, we note that the hearing officer struck that portion of the testimony from the record when he determined that the document had not been timely exchanged and we see no mention of the excluded evidence in the hearing officer's decision and order. We perceive no error.

As for the claimant's assertion that the hearing officer erred in denying his motion for a continuance, we note that no such motion was made or reurged at the hearing nor was any prehearing written motion offered into evidence or otherwise made a part of the record. Accordingly, the claimant did not preserve error relating to a denial of any such motion.

With respect to the disputed issues, there was conflicting evidence. The claimant testified that he injured his back lifting a washer on or about _____. The claimant testified that he was still on the clock for the employer when he was helping his friend move the washer. He also testified that he told his supervisor that he injured his back at work no later than June 25, 2002. The claimant contends that he has had disability since October 1, 2002. The carrier offered evidence that the claimant had been having attendance problems and that if the claimant was injured, the claimant may have been injured loading his car or if he was injured helping a friend move a washer, it was not in the course and scope of employment. The employer testified that the claimant did not report a work-related injury until July 22, 2002, at the earliest.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record and resolved what facts were established. We conclude that the hearing officer's determinations are sufficiently supported by the record and 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).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

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

Roy L. Warren
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge