

APPEAL NO. 030434
FILED APRIL 14, 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 was held on January 27, 2003. The hearing officer determined that the respondent/cross-appellant (carrier herein) waived its right to dispute the compensability of the appellant/cross-respondent's (claimant herein) _____, injury; that the claimant did sustain a compensable injury on _____; that the injury of _____, does not include an injury to the claimant's right and left hands and wrists; and that claimant did not have disability. The claimant appeals the hearing officer's extent-of-injury and disability determinations. The claimant also contends that the hearing officer erred in admitting exhibits from the carrier that were not timely exchanged. The carrier appeals the hearing officer's carrier waiver determination. The claimant responds that the hearing officer correctly found that the carrier waived its right to dispute compensability.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant contended that he was injured at work on _____, when he cut his right calf on a piece of protruding glass and fell. The carrier brought forth evidence from coworkers disputing this. The carrier also contended that the claimant performed his usual duties until June 21, 2002, when he voluntarily walked off the job. The claimant argues that he was unable to work due to his compensable injury, which the carrier denies. The carrier first received written notice of the claimant's injury on July 5, 2002. The carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with Texas Workers' Compensation Commission on July 15, 2002, noting it accepted an injury of right calf cut, but disputed any resulting disability.

ADMISSION OF EVIDENCE

The hearing officer admitted some carrier exhibits that were not timely exchanged, finding good cause for the lack of timely exchange. We have frequently held that 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). We find no abuse of discretion in the hearing officer's application of the exchange of evidence rules and perceive no error in the admission of the exhibits in question.

CARRIER WAIVER

Section 409.021(a) requires that a carrier act to initiate benefits or to dispute compensability within seven days of first receiving written notice of an injury or waive its right to dispute compensability. See Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002); Texas Workers' Compensation Commission Appeal No. 030380, decided April 10, 2003. The hearing officer found carrier waiver due to the fact that the carrier received written notice of injury on July 5, 2002, but did not initiate benefits or dispute compensability until July 15, 2002. While requesting that we review the hearing officer's findings of fact and conclusions of law concerning carrier waiver, the carrier makes no argument and gives us no rationale to reverse the hearing officer. We perceive no error.

EXTENT OF INJURY

The claimant argues that the hearing officer erred in finding that the claimant's injury does not include an injury to his hands and wrists. We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We do not find that to be the case here.

The claimant argues that the carrier waived its right to dispute an injury to the claimant's hands and wrists when it failed to dispute the compensability of the claimant's injury within seven days of receiving notice of injury. We note that pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)) that Section 409.021 does not apply to disputes of extent of injury. See Texas Workers' Compensation Commission Appeal No. 023106, decided January 22, 2003.

DISABILITY

Disability is question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. There was conflicting evidence concerning disability in this case. Applying the standard of review discussed above we find no error in the hearing officer's resolution of the disability issue. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer 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 N. ST. PAUL STREET
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge