

APPEAL NO. 030440  
FILED APRIL 2, 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 2, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that he did not give timely notice of the claimed injury to his employer; and that he did not have disability. The claimant appeals this decision and contends that the hearing officer erroneously excluded Claimant's Exhibit E. The appeal file contains no response from the respondent (carrier).

DECISION

Affirmed.

Regarding the exclusion of Claimant's Exhibit E for 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 exclusion of the exhibit in question.

We note that the claimant asserts in his appeal that "witnesses were present for the hearing but were not admitted." Although the appearance sheet indicates that one person signed in as a "witness for claimant," the record does not reflect that any witnesses, other than the claimant, were called to testify. Furthermore, there is no indication that potential witnesses were excluded from the hearing room. Without an actual witness being called to testify and a ruling regarding the admissibility of the witness's testimony, we are unable to address the claimant's complaint in this regard on appeal.

The hearing officer did not err in making the complained-of determinations. Conflicting evidence was presented at the hearing on the disputed issues in this case. 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 from the evidence presented. 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is 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

**C T CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge