APPEAL NO. 030527
FILED APRIL 16, 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 31, 2003. The hearing officer determined that the _____, compensable injury of respondent (claimant) extends to and includes left carpal tunnel syndrome (CTS) in addition to right CTS. Appellant (carrier) appealed this determination on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and remand.

Carrier contends that the hearing officer erred in admitting Claimant's Exhibit No. 1, an August 1, 2002, letter from Dr. V. Carrier asserts that there was no good cause for admitting this document, and that it was not timely exchanged. Carrier contends that it was significantly harmed by the introduction of this letter because it "is the only piece of medical evidence establishing a causal connection between the claimant's left [CTS] and her employment."

The hearing officer's evidentiary rulings are reviewed using an abuse-of-discretion standard. Texas Workers' 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 admitting evidence, 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).

In this case, claimant said she did not exchange the August 1, 2002, letter until a few weeks before the hearing. She said she thought her doctor had sent it to carrier but she was not sure if he did. The hearing officer admitted the letter, stating that "it appears the claimant made an effort to exchange it and thought it was exchanged by [her] doctor acting as her agent . . . ." The hearing officer also said, "I think there was an exchange or good cause for failure to exchange . . . ."

In this case, there was no evidence that the letter was exchanged, so the hearing officer erred in determining that it was exchanged. Further, making an effort to exchange a document, without making sure it's exchanged, does not constitute good cause for the failure to exchange. We conclude that the hearing officer abused his discretion in admitting the August 1, 2002, letter.

Regarding a harm analysis, the August 1, 2002, letter was the only medical evidence unequivocally stating that the left CTS was caused by claimant's work.

Although medical evidence of causation was not required in this case, it does appear that the hearing officer relied on this letter in making his determination regarding causation. We cannot say that the August 1, 2002, letter was cumulative of other similar evidence. Therefore, we must reverse the hearing officer's determination that the injury extends to left CTS and remand this case for reconsideration of the extent issue. In considering the extent issue, the hearing officer should not consider the August 1, 2002, letter.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

According to information provided by carrier, 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 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Judy L. S. Barnes
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. Based on the other evidence in the record regarding the causation of the carpal tunnel syndrome, I would find that there is no reversible error. I would affirm.

_____
Robert W. Potts
Appeals Judge