

APPEAL NO. 030540
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 February 4, 2003. With respect to the single issue before her, the hearing officer determined that the respondent's (claimant) compensable injury of _____, includes an injury to the cervical spine. In its appeal, the appellant (carrier) challenges that determination as being against the great weight of the evidence. In addition, the carrier argues that the hearing officer erred in excluding Carrier's Exhibit No. 8. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, includes an injury to the cervical spine. That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded that the claimant sustained his burden of proving that he sustained an injury to his cervical spine while removing and reinstalling a cylinder head on an engine at work on _____. The factors emphasized by the carrier in challenging the hearing officer's extent-of-injury determination on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Now we consider the carrier's assertion of error regarding the exclusion of Carrier's Exhibit No. 8. In order to obtain a reversal for the exclusion of evidence, the carrier must demonstrate that the evidence was actually erroneously excluded and that "the error was reasonably calculated to cause and probably did cause rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732, 737 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been held 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 Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.) In this instance, any error in the exclusion of Carrier's Exhibit No. 8 simply does not rise to the level of reversible error. The challenged exhibit is medical records from the claimant's treating

doctor. The carrier argues that the exclusion of those records was significant because the treating doctor does not mention complaints of neck pain. In his cross-examination, the claimant acknowledged that the treating doctor's records are devoid of references to cervical complaints. The carrier was able to make its point about the delayed onset of references to complaints of pain in the medical records and more to the point the lack of such references in the treating doctor's records. Accordingly, we find no merit in the assertion that the exclusion of this exhibit was reversible error.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **SECURITY NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DONALD GENE SOUTHWELL
10000 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75265.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge