APPEAL NO. 031004
FILED JUNE 12, 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 March 20, 2003. The hearing officer decided the appellant (claimant) did not sustain a compensable injury on _____, and that because he sustained no injury the claimant had no disability. The claimant appeals, and the respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

At the outset we note the claimant contends that the hearing officer committed reversible error by excluding from evidence a witness statement for untimely exchange and in admitting a surveillance video over the claimant's objection that the videographer's name was not exchanged as a person with knowledge of relevant facts.

The hearing officer did not commit reversible error in excluding the offered statement on the basis that it had not been timely exchanged with the carrier. We have frequently held that to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the 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). The excluded statement is essentially cumulative evidence to bolster the claimant's testimony and his version of the events. We conclude that the claimant has not shown that the hearing officer abused her discretion in excluding the report or that that ruling constituted reversible error.

The claimant also objected to the admissibility of the surveillance video because the name of the videographer was not exchanged as a person with knowledge of relevant facts. We know of no rule that requires the name of a photographer or videographer be exchanged. Consequently, the hearing officer did not err in allowing the surveillance video into evidence.

With respect to the alleged injury and disability, the claimant had the burden to prove that he was injured in the course and scope of employment and that he has had disability. Conflicting evidence was presented at the hearing. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ).

Although the claimant argues the medical evidence he offered is unrefuted, a fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). Our review of the record reveals that the hearing officer's injury and disability determinations were supported by sufficient evidence and are not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

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Thomas A. Knapp
Appeals Judge