

APPEAL NO. 031222
FILED JUNE 26, 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 April 14, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from November 7, 2002, through the date of the hearing. The appellant (carrier) contends that this decision is against the great weight of the evidence and that the hearing officer erred in denying its motion for continuance. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury as defined by Section 401.011(10) and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. 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. We conclude that the hearing officer's decision on the two disputed issues of compensable injury and disability are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The carrier asserts, on appeal, that the hearing officer abused his discretion in denying its written motion for continuance, which was faxed to the Texas Workers' Compensation Commission (Commission) on April 7, 2003. Section 410.155 provides that a written request by a party for a continuance of a hearing to another date must be directed to the Commission and that the Commission may grant a continuance of a hearing to another date only if it determines there is good cause for doing so. We review a ruling on a request for a continuance under an abuse-of-discretion standard; that is, whether the hearing officer acted without reference to any guiding principles. Texas Workers' Compensation Commission Appeal No. 951252, decided September 13, 1995. The guiding principle or test for the existence of good cause to grant a continuance is whether the movant exercised the degree of diligence in prosecuting the case that an ordinary person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 970135, decided March 12, 1997. Carrier's Exhibit No. 4 reflects that the carrier requested a motion for continuance on April 7, 2003, and listed the carrier's name as "Hartford Accident & Indemnity," rather than "American Home Assurance." The carrier requested the continuance in order to obtain a required medical examination to refute the claimant's disability claim. It is undisputed that the hearing officer denied the carrier's

motion for continuance. Review of the record does not reflect that the carrier reurged the motion for continuance at the hearing, although the claimant states in her response that the carrier “reurged the Motion for Continuance but the Hearing Officer again denied the Motion.” The movant has the burden of establishing good cause, and a hearing officer’s ruling will be overturned only for an abuse of discretion; that is, when the hearing officer acts without reference to any guiding rules or principles. Morrow v. HEB, 714 S.W.2d 297 (Tex. 1986); Texas Workers’ Compensation Commission Appeal No. 931034, decided December 27, 1993. Under these facts, the record fails to demonstrate that the hearing officer abused his discretion in denying the carrier’s request for a continuance.

The hearing officer’s decision and order is affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. JIM MALLOY
AMERICAN INTERNATIONAL GROUP
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge