

APPEAL NO. 031298
FILED JULY 9, 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 December 4, 2002, and March 27, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. The claimant appeals these determinations and contends that she was "procedurally prejudiced as she was not allowed her questions answered by [Dr. Sc]." The carrier urges affirmance of the hearing officer's decision and refutes the assertion that the claimant was procedurally prejudiced by the omission of the answers to the questions posed by the claimant to Dr. Sc.

DECISION

Affirmed.

The record reflects that at close of the initial hearing date on December 4, 2002, the hearing officer left the record open so that the Depositions on Written Questions could be forwarded to Dr. Sc and Dr. Sm. The claimant did not object to this request, but did request that she also be allowed to present questions to the doctors. The hearing officer left the record open in order for both parties to prepare their questions, forward them to the doctors, and obtain the doctors' responses. On March 27, 2003, the hearing was reconvened. The hearing officer admitted, without objection by the claimant, the aforementioned questions, as well as the responses of both doctors. The documentary evidence reflects that Dr. Sc answered the first page of the claimant's questions, but not the second page. For this reason, the claimant requests a new hearing in order to obtain the omitted answers. However, the claimant did not note the omission at the hearing, did not request a continuance in order to obtain the information, and did not object to the admission of Carrier's Exhibit No. 7. Accordingly, the claimant waived the right to complain about this matter on appeal.

Whether the claimant sustained a compensable injury and had disability were factual questions for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). Nothing in our review of the record reveals 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 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge