

APPEAL NO. 031491  
FILED JULY 30, 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 May 5, 2003. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; (2) the claimant had disability from January 17, 2003, through the date of the hearing; and (3) the employer's offer of employment was not a *bona fide* offer of employment (BFOE), pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6). The appellant (carrier) appeals the hearing officer's injury determination on sufficiency of the evidence grounds and asserts that the hearing officer erred by not admitting Carrier's Exhibit Nos. 7 through 12. The claimant did not file a response. The hearing officer's disability and BFOE determinations were not appealed.

DECISION

Affirmed.

We first address the carrier's assertion that the hearing officer erred by not admitting Carrier's Exhibit Nos. 7 through 12. The claimant objected to the admission of these documents on the basis that they were not timely exchanged in accordance with Rule 142.13(c). The carrier could not produce a return receipt showing that the claimant had received the documents. Accordingly, the hearing officer determined that the exhibits were not timely exchanged and they were not admitted. Subsequently during the hearing, the carrier received a facsimile which it now indicates was evidence showing that Carrier's Exhibit Nos. 7 through 12 were timely exchanged. The hearing officer declined to reconsider the admissibility of the exhibits and admonished the carrier to "come prepared" in the future. The carrier did not make an offer of proof or otherwise indicate what was contained in the facsimile, at the hearing. Any error in the exclusion of the carrier's exhibits was, therefore, waived. Additionally, we do not find that the exclusion of the carrier's exhibits was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The hearing officer did not err in determining that the claimant sustained a compensable injury on \_\_\_\_\_. This determination involved 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)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination 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, 176 (Tex. 1986).

The carrier asserts that the hearing officer demonstrated bias in reaching her decision. We find no support in the record for the carrier's assertion that the hearing officer was motivated by or in any way demonstrated bias against the carrier. The fact that the hearing officer issued a decision adverse to the carrier does not, in our view, demonstrate bias but is the prerogative of the hearing officer as sole judge of the weight and credibility of the evidence.

The decision and order of the hearing officer is affirmed.

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

**LEO MALO  
ZURICH NORTH AMERICA  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Veronica Lopez-Ruberto  
Appeals Judge