

APPEAL NO. 031976
FILED SEPTEMBER 15, 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 July 8, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, and that she, therefore, does not have disability. The claimant appealed on sufficiency of the evidence grounds, further asserting evidentiary error and bias on the part of the hearing officer. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

We first address the claimant's evidentiary objection. The claimant asserts that it was error for the hearing officer to admit correspondence dated May 16, 2003, from the employer with an attached work audit of the claimant's job performance. We have frequently held that to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or 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). 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 Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We find no abuse of discretion in the hearing officer's admission of the complained-of document over the claimant's relevancy objection. The claimant has failed to offer sufficient proof that the admission of the document amounted to reversible error.

The disputed issues of injury and disability presented questions of fact for the hearing officer to resolve. Section 410.165(a) provides that 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 the evidence. 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). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and

preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the challenged findings of the hearing officer.

Finally, the claimant contends that the hearing officer demonstrated bias in reaching his decision and requests reversal on this basis. The record does not reveal hearing officer bias nor does it reveal that the hearing officer's decision was based upon anything other than his impartial credibility determinations.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LUMBERMEN'S UNDERWRITING ALLIANCE** and the name and address of its registered agent for service of process is

DANIEL J. O'BRIEN
12200 FORD ROAD, SUITE 344
DALLAS, TEXAS 75234-7625.

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge