APPEAL NO. 032105
FILED SEPTEMBER 22, 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 15, 2003. The hearing officer determined that, as a result of the _____________, compensable injury, the appellant (claimant) did not have disability from December 5 through December 27, 2001; that the claimant had disability from December 27, 2001, through May 14, 2002, as stipulated by the parties; and that the claimant reached maximum medical improvement (MMI) on May 14, 2002, with a 0% impairment rating (IR). The claimant appeals these determinations and asserts that the hearing officer erred in denying her oral motion for continuance and in excluding one of her exhibits. Additionally, the claimant alleges that the hearing officer was biased. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The claimant asserts that the hearing officer erred in excluding from evidence the affidavit of her treating doctor, which was not timely exchanged, and in denying her oral motion for continuance. In order 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 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 Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The hearing officer noted that the treating doctor's delay in providing the report did not constitute good cause for failing to timely exchange it and excluded the report. He also determined that the failure to timely exchange the report, which was the basis for the motion for continuance, did not constitute good cause for continuing the case to a later date. Under these facts, we find no abuse of discretion in the hearing officer's exclusion of the exhibit and denial of the oral motion for continuance.

Disability is a factual question for the hearing offer 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 of the weight and credibility that is to be given to the evidence. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer was not persuaded by the evidence that the claimant satisfied her

burden of proving that she had disability from December 5 through December 27, 2001. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986)

The claimant appealed the hearing officer's MMI and IR determinations, contending that the hearing officer should not have considered the designated doctor's report and that designated doctor did not perform an adequate examination or rate her entire injury. Sections 408.122(c) and 408.125(e) provide that where there is a dispute as to the date of MMI and the IR, the report of the Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a Commission request for clarification is considered to have presumptive weight, as it is part of the doctor's opinion. The hearing officer reviewed the designated doctor's report and his response to the Commission's request for clarification and determined that the great weight of the other medical evidence is not sufficient to overcome the presumptive weight accorded the designated doctor's report. We perceive no error in the hearing officer's consideration of the designated doctor's report or his resolution of the MMI and IR issues.

Finally, the claimant asserts that the hearing officer was biased against her and her attorney, but does not point to any specific example of the alleged bias. We find no evidence in the record to support this contention. As such, we perceive no error in regard to the claimant's allegation.

The hearing officer’s decision and order are affirmed.

The true corporate name of the insurance carrier is **SECURITY INSURANCE COMPANY OF HARTFORD** 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:

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Judy L. S. Barnes
Appeals Judge

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Margaret L. Turner
Appeals Judge