APPEAL NO. 032673
FILED NOVEMBER 20, 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 (CCH) was held on August 28, 2003. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of _____, extends to include degenerative changes and arthritis to the right knee; (2) that the date of maximum medical improvement (MMI) is February 19, 2003; (3) that the respondent's (claimant) impairment rating (IR) is 20%; and (4) that the claimant had disability from November 18, 2002, through February 19, 2003. The appellant (carrier) appealed, arguing that the hearing officer erred in excluding the medical report of Dr. F, and disputing the extent-of-injury determination as well as the determinations of IR and disability. The claimant responded, urging affirmance.

DECISION

Affirmed.

We first address the carrier's evidentiary objection. The carrier asserts that the hearing officer erred in failing to admit a medical report, which it offered into evidence. Parties must exchange documentary evidence with each other not later than 15 days after the benefit review conference and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). The hearing officer determined that the medical report was not timely exchanged, and that no good cause existed for the untimely exchange. To obtain a reversal on the basis of admission or exclusion of evidence, it must be shown that the ruling admitting or excluding the evidence was error and that error 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). It has also been stated 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.). We conclude that the hearing officer properly excluded the complained-of medical report on the grounds of no timely exchange and no good cause shown.

Next we address the extent-of-injury issue. Extent of injury is 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). The hearing officer reviewed the record and the conflicting medical evidence, and was persuaded that the compensable injury of _____, extended to include degenerative changes and arthritis to the right knee. The claimant's treating doctor opined that the claimant's right-knee condition which necessitated knee replacement surgery in December of 2002, was related to the compensable injury. We conclude that the hearing officer's determination is sufficiently supported by the record and is not 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 acknowledges in its appeal that both the IR and the disability issues are dependent upon the outcome of the extent-of-injury determination. The parties stipulated that Dr. E is the Texas Workers' Compensation Commission (Commission)-selected designated doctor assigned to assess the claimant's MMI and IR. The evidence reflects that on February 19, 2003, Dr. E certified that the claimant reached MMI as of that date with a 20% IR, which included impairment for a right knee replacement secondary to post-traumatic osteoarthritis and job-related injury of _____. Sections 408.122(c) and 408.125(c) provide that the report of the designated doctor has presumptive weight and the Commission shall base its determinations of MMI and IR on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. The hearing officer found that the presumptive weight afforded to the opinion of the designated doctor was not overcome by the great weight of other medical evidence, and concluded that the claimant reached MMI on February 19, 2003, with a 20% IR as reported by the designated doctor. With regard to the disability issue, the hearing officer found that the claimant's inability to obtain and retain employment at wages equivalent to her preinjury wage from November 18, 2002, to February 19, 2003, was because of the claimant's compensable injury, and concluded that the claimant had disability, as defined by Section 401.011(16), from November 18, 2002, through February 19, 2003.

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 determinations on the disputed issues 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, *supra.*

We affirm the decision and order of the hearing officer.

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

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge