

APPEAL NO. 032873
FILED DECEMBER 29, 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 October 3, 2003. The hearing officer resolved the disputed issues by determining that the respondent/cross-appellant's (claimant) compensable injury of _____, includes loose body formation in the left ankle, but does not include reflex sympathetic dystrophy (RSD), and that the claimant had disability as a result of her compensable injury from July 5, 2002, through the date of the CCH. The appellant/cross-respondent (carrier) appeals the hearing officer's determination that the compensable injury includes loose body formation in the left ankle and the hearing officer's determination on the disability issue. The claimant appeals the hearing officer's determination that the compensable injury does not include RSD. The carrier filed a response to the claimant's appeal. The claimant did not file a response to the carrier's appeal.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury to her left ankle. Whether the compensable injury included a loose body formation in the left ankle and RSD, and whether the claimant had disability as defined by Section 401.011(16) as a result of her compensable injury presented fact questions for the hearing officer to resolve from the conflicting evidence presented at the CCH. 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. The hearing officer resolved the conflicting evidence, which included conflicting medical opinions regarding the extent of the claimant's left ankle injury, by determining that the compensable injury includes a loose body formation in the left ankle, but does not include RSD, and he resolved the conflicting evidence on the disability issue by determining that the claimant had disability from July 5, 2002, through the date of the CCH. Although there is conflicting evidence in this case, 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 v. Bain, 709 S.W.2d 175 (Tex. 1986).

The carrier has not shown that the hearing officer committed reversible error in excluding the employer's pay records from evidence. See Hernandez v. Hernandez, 611 S.W.2d 732, 737 (Tex. Civ. App.-San Antonio 1981, no writ) (to obtain reversal based on the exclusion or admission of evidence, it must be shown that the ruling was in fact error and that the error was reasonably calculated to cause and probably did cause rendition of an improper judgment). It appears that the hearing officer believed

that the carrier was attempting to circumvent the exchange rule, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)), by having the employer offer those records because the records were not exchanged with the claimant. It is also clear from the hearing officer's decision that he did consider evidence from the employer's representative regarding the hours worked by the claimant and the claimant's testimony in reaching his decision on the disability issue.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge