

APPEAL NO. 033055
FILED JANUARY 13, 2004

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 October 30, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury in the form of an occupational disease, with a date of injury of _____; that the appellant (carrier) waived the right to contest compensability by not timely disputing the claim; and that the claimant had disability from December 15, 2001, through April 16, 2002, and from October 17, 2002, through January 11, 2003. The carrier appealed, disputing the determinations and arguing that the hearing officer erred when he refused to add the extent-of-injury issue requested by the carrier and also arguing that the hearing officer erred when he excluded the records of Dr. C. The claimant responded, urging affirmance of the disputed determinations. The claimant additionally contends that the records were properly excluded and that the hearing officer properly denied the carrier's request to add an issue.

DECISION

Affirmed.

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 (BRC) 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.

ADDITIONAL ISSUE

The carrier argues on appeal that the hearing officer erred in failing to add a requested extent-of-injury issue. Section 410.151(b) provides, in part, that an issue not

raised at a BRC may not be considered unless the parties consent or, if the issue was not raised, the Texas Workers' Compensation Commission determines that good cause exists for not raising the issue at the BRC. Rule 142.7 provides that additional issues may be added by a party by unanimous consent of the parties, and on the request of a party if the hearing officer finds good cause. We have reviewed the record and we perceive no abuse of discretion on the part of the hearing officer denying the motion to add the extent-of-injury issue. Downer v. Aquamarine Operations, Inc., 701 S.W.2d 238 (Tex. 1985), Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

CARRIER WAIVER

The hearing officer did not err in determining that the carrier waived the right to dispute compensability of the claimed injury. A Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) in evidence reflects that the carrier first received written notice of the claimed injury on November 11, 2001, and disputed the claim on January 2, 2002. Section 409.021(a) requires that a carrier act to initiate benefits or to dispute compensability within seven days of first receiving written notice of an injury or waive its right to dispute compensability. See Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002); Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. There was no evidence in the record or even an allegation that the carrier took any type of action to initiate benefits prior to filing their dispute. There is sufficient evidence to support the hearing officer's carrier waiver determination.

COMPENSABLE INJURY AND DISABILITY

The claimant claimed that she sustained respiratory injuries as a result of exposure to mold at her job. The hearing officer considered the conflicting evidence and determined that the claimant sustained an injury in the form of an occupational disease as defined by Section 401.011(34) and had disability as defined by Section 401.011(16). 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 noted that two separate physicians opined that the claimant sustained an injury in the course and scope of her employment. We conclude that the hearing officer's determinations that the claimant sustained an injury in the form of an occupational disease and had disability 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).

We affirm the decision and order of the hearing officer.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge