

APPEAL NO. 033098
FILED JANUARY 12, 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 (CCH) was held on November 4, 2003, with the record closing on November 14, 2003. The hearing officer determined that: (1) the appellant's (claimant) current medical condition at the L5-S1 level of his spine is not a result of the compensable injury of _____; and (2) the claimant did not have disability. The claimant appeals these determinations essentially on sufficiency of the evidence grounds and asserts that the hearing officer erred by not admitting a required medical examination (RME) doctor's report, dated November 5, 2003. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

We first address the claimant's assertion that the hearing officer erred by not admitting the RME doctor's report dated November 5, 2003. The hearing officer held the record open, following the CCH below, to obtain the results of an EMG/NCV study to be performed the following day. The claimant submitted these results by facsimile on November 13, 2003. The EMG/NCV report was admitted as Hearing Officer's Exhibit No. 3 and the record was closed on November 14, 2003. In a separate facsimile, the claimant also submitted an RME report dated November 5, 2003. The facsimile coversheet shows that it sent to the Texas Workers' Compensation Commission on November 14, 2003, and states, "Without comment, RME report." The report was not admitted into evidence. To obtain reversal of a judgment based upon an admission or exclusion of evidence, an appellant must first show that the admission or exclusion was an abuse of discretion, and 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). 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.). Applying this standard, we cannot conclude that the hearing officer erred by not admitting the RME doctor's report. Additionally, the RME doctor's report does not satisfy the requirements for newly discovered evidence, because it is cumulative of other medical records already in evidence and is not so material that it would probably result in a different decision. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; *Black v. Wills*, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Accordingly, the RME doctor's report, dated November 5, 2003, will not be considered on appeal.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions 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)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer could disbelieve the claimant's evidence and find against him. Accordingly, we cannot conclude that the hearing officer's determinations are 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 claimant asserts that the hearing officer demonstrated bias in reaching his decision. We find no support for this contention in the record. The fact that the hearing officer issued a decision adverse to the claimant does not, in our view, demonstrate bias but is the prerogative of the hearing officer as the sole judge of the weight and credibility of the evidence. In the absence of a showing of bias, we will not reverse the hearing officer's decision.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge