

APPEAL NO. 033268  
FILED FEBRUARY 9, 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 22, 2003. The hearing was continued to November 18, 2003, and the record closed on that day. With respect to the issues before her, the hearing officer determined that the respondent's (claimant) compensable injury of \_\_\_\_\_, includes or extends to include a triangular fibrocartilage tear of the left wrist, ulnocarpal impaction syndrome with ulnar positive variant, and malunion of the left distal radius; that the claimant had disability, as a result of his compensable injury, from December 2, 2000, through the date of the hearing; and that the appellant (carrier) did not waive its right to contest compensability of the claimed injury. In its appeal, the carrier argues that the hearing officer's extent-of-injury and disability determinations are against the great weight of the evidence. In his response to the carrier's appeal, the claimant urges affirmance. The claimant did not appeal the determination that the carrier did not waive its right to contest compensability in this case and that determination has, therefore, become final. Section 410.169.

DECISION

Affirmed.

Initially, we will consider the carrier's assertion that the hearing officer erred in excluding the November 9, 2003, report of Dr. R for failure to timely exchange. The carrier received the November 9, 2003, report from Dr. R on November 12, 2003; however, it did not send the report to its attorney until November 17, 2003, one day before the hearing, at which time the carrier's attorney sent the report to the claimant's attorney. The hearing officer determined that the carrier did not act with due diligence in holding the report for five days before sending it to their counsel, who in turn exchanged it with the claimant. In her ruling, the hearing officer emphasized the fact that the continued setting of the hearing was scheduled for six days after the carrier received Dr. R's report. We cannot agree that the hearing officer abused her discretion in finding that the carrier did not exercise due diligence to exchange the report as soon as it became available; thus, we find no merit in the carrier's challenge to the hearing officer's decision to exclude Dr. R's November 9, 2003, report.

The hearing officer did not err in making her extent-of-injury and disability determinations. Those issues presented 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). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded by the evidence that the claimant sustained his burden of proving that his compensable injury includes

or extends to include a triangular fibrocartilage tear of the left wrist, ulnocarpal impaction syndrome with ulnar positive variant, and malunion of the left distal radius, and that he had disability from December 2, 2000, through the date of the hearing. The factors emphasized by the carrier in challenging those determinations on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issues before her. Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **BITUMINOUS CASUALTY CORPORATION** and the name and address of its registered agent for service of process is

**GLENN CAMERON  
222 WEST LAS COLINAS BOULEVARD, SUITE 1720  
IRVING, TEXAS 75016-7968.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge