

APPEAL NO. 033270
FILED FEBRUARY 3, 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 October 2, and November 5, 2003. The hearing officer resolved the disputed issue by deciding that the claimant did not have disability as a result of the injury of _____. The appellant (claimant) appealed, arguing that the disability determination is against the great weight and preponderance of the evidence and contending that the hearing officer erred when she excluded several of the claimant's exhibits. The respondent (self-insured) responded, urging affirmance and arguing that the hearing officer did not err in making her evidentiary rulings.

DECISION

Affirmed.

We first address the claimant's evidentiary objection. The claimant asserts that the hearing officer erred in failing to admit several of the exhibits, which he 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 claimant admitted that the exhibits in question were not timely exchanged, but argued that the carrier had possession of the exhibits and the documents presented no surprise. The hearing officer determined that claimant's exhibit numbers 1 (except for pages 6 through 11 and page 13), 2, 3, 5 (except for page 3), 6, 7, and 10 were 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 the 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 find no abuse of discretion in the hearing officer's application of the exchange of evidence rules and perceive no reversible error in the evidentiary rulings in question.

A review of the record reflects that the parties stipulated that the claimant sustained a compensable injury on _____. The sole issue to be decided at the CCH was whether the claimant has disability as a result of the injury of _____. The claimant had the burden to prove that he had disability as defined by Section 401.011(16). Conflicting evidence was presented on this issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies

and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We have reviewed the challenged determination. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra; In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CITY SECRETARY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge