APPEAL NO. 040738
FILED MAY 25, 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 March 4, 2004. The hearing officer determined that the respondent's (claimant) _____, compensable injury extends to and includes the lumbar spine, and that she had disability from July 16, 2003, through the date of the hearing. The appellant (carrier) appeals these determinations and asserts evidentiary error in the hearing officer's admission of a portion of Claimant's Exhibit No. 4 and the entirety of Claimant's Exhibit No. 10. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The evidence reflects that the carrier objected to the admission of the aforementioned exhibits on the basis that neither exhibit had been timely exchanged; that Claimant Exhibit No. 10 was incomplete and not relevant to the claimant's case; and that the claimant did not follow proper procedural rules in obtaining the first two pages of Claimant's Exhibit No. 4. In order to obtain reversal of a judgment based upon the hearing officer's admission of evidence, an appellant must first show that the admission was an abuse of discretion, and also 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's admission of the first two pages of Claimant's Exhibit No. 4 constitutes reversible error, as the information contained therein is cumulative of other information contained in the exhibit. As there is no evidence that the hearing officer relied on Claimant's Exhibit No. 10 in making his decision, we cannot agree that its admission constitutes reversible error.

The disputed issues in this case involved factual questions 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)). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our

review of the record indicates that the hearing officer's decision is 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 decision and order of the hearing officer are affirmed.

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.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge