APPEAL NO. 040888
FILED MAY 28, 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 March 16, 2004. The hearing officer resolved the disputed issues by deciding that the compensable injury of _____, does not include an injury to the lumbar spine, specifically a herniated disc at L4-5, and/or any injury to the thoracic or cervical spine, and that the respondent (carrier) did not waive the right to dispute compensability of the claimed injury as it did contest compensability of the injury in accordance with Section 409.021. The appellant (claimant) appealed, arguing that the hearing officer's decision is so against the great weight and preponderance of the medical evidence as to be clearly wrong and unjust. The claimant also contends that the hearing officer erred in failing to admit a medical report submitted by the claimant. The carrier responded, urging affirmance of the hearing officer's decision.

DECISION

Affirmed.

We first address the claimant's evidentiary objection. The claimant asserts that the hearing officer erred in failing to admit a medical report, which she 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)). Although the claimant acknowledged at the CCH that the report was never exchanged, she argued that the carrier received a copy of the report on January 21, 2003, because a copy of the report was mailed to the carrier directly from the physician who wrote the report. 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 in 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.

The 1989 Act does not contemplate multiple notices of injury and responses thereto. It is the first written notice of an injury, not discovery of facts constituting a defense, which begins the 7- and 60-day deadlines set out in Section 409.021. Rule 124.1(a); Texas Workers' Compensation Commission Appeal No. 93967, decided December 9, 1993. The Appeals Panel has held that the Employer's First Report of

Injury or Illness (TWCC-1) is, by definition under Rule 124.1, the first written notice of injury, and where one is filed, no resort to other records which fairly inform the carrier of injury need be made to calculate the deadlines. Texas Workers' Compensation Commission Appeal No. 021907, decided September 16, 2002. The TWCC-1 is not the last word on the scope of the injury that actually occurred. Texas Workers' Compensation Commission Appeal No. 992626, decided December 30, 1999. *See also* Texas Workers' Compensation Commission Appeal No. 021569, decided August 12, 2002, Texas Workers' Compensation Commission Appeal No. 021907, decided September 16, 2002, Texas Workers' Compensation Commission Appeal No. 022183, decided October 9, 2002, and Texas Workers' Compensation Commission Appeal No. 022454, decided November 18, 2002, where we have discussed when disputes were properly characterized as extent of injury or not depending on the factual circumstances of each case. Rule 124.3(c) provides that Section 409.021 does not apply to disputes of extent of injury. This is not a case where the carrier attempted to recast the primary injury as an extent-of-injury issue. The hearing officer noted in her Statement of the Evidence that the carrier accepted a lumbar sprain/strain. We affirm the hearing officer's determination that the carrier did not waive the right to contest the compensability of the claimed injury as it did contest compensability of the injury in accordance with Section 409.021.

Extent of injury is a question of fact. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. 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). The hearing officer noted in her Statement of the Evidence that the claimant was not credible. In view of the evidence presented, we cannot conclude that the hearing officer's disputed determination 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).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **COMMERCE AND INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge