

APPEAL NO. 041297
FILED JULY 13, 2004

This appeal after remand 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 November 24, 2003. The hearing officer determined that the _____, compensable injury of appellant (claimant) does not extend to her low back condition after June 12, 2002. Claimant appealed the determination on procedural, evidentiary, and sufficiency of the evidence grounds. Respondent (carrier) responded, urging affirmance. The Appeals Panel reversed the hearing officer's decision and order and remanded for the hearing officer to make findings of fact regarding good cause for the late exchange of Carrier's Exhibit Nos. 19 and 20 and the reason for and the circumstances surrounding the granting of the continuance and the granting of the subpoena for the medical records contained in those two exhibits. Texas Workers' Compensation Commission Appeal No. 033330, decided February 9, 2004. The hearing officer held a hearing on remand on April 13, 2004. No witnesses testified. The hearing officer signed a decision on remand determining that: (1) Carrier's Exhibit Nos. 19 and 20 were obtained pursuant to the subpoenas; (2) Carrier's Exhibit Nos. 19 and 20 were exchanged within a reasonable time after they were obtained; and (3) there was good cause for admitting Carrier's Exhibit Nos. 19 and 20 into evidence. The hearing officer stated that the subpoenas for the evidence contained in Carrier's Exhibit Nos. 19 and 20 were "properly issued." The hearing officer also determined that there had been good cause for granting a continuance at the first hearing. The hearing officer again determined that claimant's _____, compensable injury does not extend to her low back condition after June 12, 2002. Claimant again appealed, complaining that she never received the request for subpoena, that she could not object to the request for that reason, and that she never agreed to a continuance. Claimant contends the hearing officer erred in determining that her _____, compensable injury does not extend to her low back condition after June 12, 2002. She also complains of the admission of Carrier's Exhibit Nos. 19 and 20. Claimant asserts that there can be no fair resolution of the issues because the hearing officer failed to capture what occurred off the record before the first hearing. Carrier responded that the Appeals Panel should affirm the hearing officer's decision and order on remand.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that: (1) carrier ever exchanged its Exhibits 19 and 20; (2) claimant did not object to the subpoena requests; and (3) claimant agreed to a continuance of the first hearing. The hearing officer reviewed the record, heard the argument of the parties, determined what facts were established, and made her determinations in this regard. We perceive no abuse of discretion or reversible error in these determinations. Claimant contends that carrier did not show diligence in obtaining the evidence contained in Carrier's Exhibit Nos. 19 and

20 and that the hearing officer should not have admitted them. We conclude that the hearing officer did not err in concluding that carrier had good cause for the late exchange of Carrier's Exhibit Nos. 19 and 20. The hearing officer did not abuse her discretion and we perceive no reversible error.

We have reviewed the complained-of determinations regarding extent of injury and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not 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 hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Credit General Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge