APPEAL NO. 041300
FILED JULY 5, 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 May 11, 2004. The hearing officer resolved the disputed issues by deciding that the compensable injury of _____, includes an injury of post concussive syndrome but does not include cervicobrachial syndrome, brachial neuritis/radiculitis, or a left shoulder sprain/strain, and that the appellant/cross-respondent (claimant) had disability beginning November 1 and continuing through November 10, 2003. The claimant appealed, arguing that the hearing officer erred by admitting the medical records of Dr. G and disputing the determination that the compensable injury did not include cervicobrachial syndrome, brachial neuritis/radiculitis, or a left shoulder sprain/strain. The respondent/cross-appellant (carrier) responded, urging affirmance of the extent-of-injury determination challenged by the claimant. Additionally, the carrier also disputed the disability determination contending that the claimant suffered no disability and disputed the determination that the compensable injury includes post concussive syndrome.

DECISION

Affirmed.

The claimant asserts that the hearing officer improperly considered the medical records of Dr. G. The claimant objected to their admission at the CCH on the grounds that the documents had not been timely exchanged. Parties must exchange documentary evidence with each other not later than 15 days after the benefit review conference (BRC) and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). The carrier argued that the documents were exchanged as they became available and that a required medical examination was not obtained sooner because the first documentation of a causal connection was not exchanged until the BRC. Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact 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). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). It was a factual issue for the hearing officer to determine whether or not the documents were in fact

timely exchanged, and, if not, if there was good cause for such failure. The hearing officer determined that the carrier had good cause for failing to timely exchange the medical records from Dr. G, and that the carrier exchanged Dr. G's records as soon as they became available. We do not find the hearing officer's ruling to be an abuse of discretion, nor can we say that the hearing officer acted without reference to guiding rules and principles. Nor did the claimant establish that the evidentiary error she asserts probably caused the rendition of an improper judgment, despite the fact that the claimant noted that the hearing officer gave greater weight to the medical records of Dr. G. The hearing officer also noted that the claimant's testimony concerning pain in her shoulder and neck was not entirely credible.

The issues of the extent of the injury, and disability were questions of fact for the hearing officer. Conflicting evidence was presented regarding the issues. 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 determinations. 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 **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
DALLAS, TEXAS 75201.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge